

THE ASBESTOS CLAIMS COURT FOR THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,

Consolidated Cases

Cause No. AC 17-0694

UNOPPOSED MOTION AND
SUPPORTING RATIONALE FOR ORDER
APPROVING DISBURSEMENT OF
SETTLEMENT PROCEEDS (ROBINSON
INSULATION COMPANY)**I. RELIEF REQUESTED**

Plaintiffs Jeremiah Hartle and Karen Hartle (the “Hartles”), by and through their counsel, with the concurrence of the Receiver for Robinson Insulation Company (“Robinson”) and counsel for the Libby Plaintiffs, seek a Court order approving the disbursement of settlement proceeds held by the Receiver pursuant to the Court’s April 20, 2020 Orders approving the settlement between the Hartles and Robinson.¹ Disbursement is fair and reasonable given 1) the extraordinary damages suffered by the Hartles, 2) the tremendous trial risk and expense Robinson and Grogan-Robinson faced at the time of settlement, 3) the substantial litigation and good faith negotiation upon which the settlement is based, and 4) the lack of objection by Robinson and its creditors, who are adequately represented by the Receiver and separate counsel.

¹ Counsel for the Hartles has been admitted *pro hac vice* in the Hartles’ underlying case, *Hartle, et al. v. Conagra Brands, Inc., et al.*, Cause No. DV-2018-532 (Mont. Dist. Ct. Flathead Cnty). At the request of the Hartles’ counsel, McGarvey, Heberling, Sullivan & Lacey, counsel for the Libby Plaintiffs, have agreed to assist with the administrative aspect of electronically filing this Motion only. The Receiver for Robinson has indicated no objection to this procedure.

II. FACTS

A. Background on Plaintiffs' Injury and Damages

Plaintiff Jeremiah Hartle is 43 years old and lives in Kalispell with his wife Karen, their 16-year-old daughter MaKenna, 12-year-old daughter Mattiline, 12-year-old son John, and 8-year-old daughter Emily. In January 2018, Mr. Hartle was diagnosed with malignant peritoneal mesothelioma.² Mesothelioma is a signature disease of asbestos exposure. That is, the causal link is so strong that a diagnosis of mesothelioma in and of itself is an indication of exposure to asbestos.³ Mesothelioma invades the lining of the abdomen; it typically kills its victims four to eighteen months after diagnosis.⁴ Plaintiffs' medical expert, Dr. Carl Brodtkin, opined that Mr. Hartle's exposure to asbestos-containing products between 1977 and 1991 was the cause of his malignant mesothelioma.⁵

After his diagnosis, Mr. Hartle sought treatment from cancer specialists in Salt Lake City and Kalispell. In February and March 2018, he received three rounds of chemotherapy which resulted in pain and nausea.⁶ He then underwent a ten-hour surgery at Kalispell Regional Medical Center which removed his spleen, gallbladder, and portions of his bowel and intestines.⁷ After an eight-week recovery period, Mr. Hartle resumed chemotherapy treatments. In November 2018, an MRI revealed that Mr. Hartle's tumors had re-emerged and in June 2019, he underwent a second surgery which revealed new cancer growth. In October 2019, a

² Declaration of Matthew Bergman in Support of Motion for Disbursement ("Bergman Decl."), **Ex. 1**, Diagnostic Report.

³ RONALD F. DODSON & SAMUEL P. HAMMAR, ASBESTOS: RISK ASSESSMENT, EPIDEMIOLOGY, AND HEALTH EFFECTS 360 (2006).

⁴ *Id.* at 393.

⁵ Bergman Decl., **Ex. 2**, Report of Carl Andrew Brodtkin, MD, MPH at page 5, Diagnosis and Assessment Section.

⁶ Bergman Decl., **Ex. 3**, Deposition of Jeremiah Hartle at 22-23.

⁷ *Id.* at 23.

1 supplemental MRI further revealed that Mr. Hartle's tumors have reemerged. Mr. Hartle is
2 currently not receiving further treatments and his doctors are focusing on palliative care.

3
4 Beyond the extensive non-economic damages sustained by Plaintiffs in this case, the
5 economic damages in this case are extensive. At the time of his diagnosis, Jeramiah was managing
6 two profitable businesses and earning over \$100,000 per year. Plaintiffs' economic expert Christina
7 Tapia, Ph.D. calculated the present value Jeramiah's lost wages and household services at
8 \$2,788,841.⁸ In addition, the Hartles have incurred medical expenses in excess of \$800,000. Thus,
9 the total economic damages in this case exceed \$3.5 million.

10 **B. Jeramiah Hartle's Exposure to Zonolite**

11 Jeremy sustained repeated, substantial exposure to asbestos contaminated Zonolite from 1979 to
12 1991 while working with and around his father, Ken Hartle. When Jeremy was a child, Ken Hartle
13 installed wood stoves during the day and earned extra money on evenings and weekends fabricating
14 panels on which the stoves stood and backing plates that protected the walls from the heat. Ken
15 Hartle used irregular pieces of flat stone held in place by a mixture of Portland cement and Zonolite.
16 By that time, Jeremy was old enough to actively participate in the fabrication process. He testified:

17 Q: How frequently do you recall working with your dad in the fabrication of the
18 panels . . . ?

19 A. Pretty much every night, you know, because, like I said, if I wanted to see my
20 dad -- you know, Dad would come home from work, he'd eat dinner and then
21 he would go out to the shop or the shed and build panels until after dark. So,
22 if I wanted to see my dad, we had to -- that's how we would see him was in
23 the shop, and so I don't know. Maybe four nights a week, at least, and then on
the weekends.⁹

Jeremy described how he would mix the Zonolite when working with his dad.

Q. Tell us about the mixing process, Mr. Hartle. How would that go down?

⁸ Bergman Decl., **Ex. 5**, Report of Christina Tapia at page 5, Preliminary Economic Damages: Jeremiah Hartle.

⁹ Bergman Decl., **Ex. 3**, Deposition of Jeremiah Hartle at 33.

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2 A. So, the mixing process is we would take a wheelbarrow, we would put
3 Portland cement, sand and vermiculite in the wheelbarrow and then you had
4 to mix those three components together. We'd use a hoe, by hand, mix it
5 together to get it to homogenize, because, otherwise, when you added
6 water to the mixture, it would -- the vermiculite would float out of the
7 mixture, and you couldn't get it to mix in. So, you'd spend a lot of time dry
8 mixing before you'd add the water.

9 Q. And what was your role in the mixing process?

10 A. As I was -- well, as I was young, I would help add the water, but as I grew
11 older, I would help dry mix and then some of the water, and then as it got
12 harder, Dad would have to take over.¹⁰



18 Ken Hartle testified he would fabricate an average of 200 panels per year using this method.¹¹

19 In addition to helping his dad mix Zonolite in the shop, Jeremy and his brother also played
20 with Zonolite as young boys. Jeremy testified that they would build bunkers out of loose Zonolite for
21 their Army men and then use firecrackers to simulate artillery:

22 Q. Tell us a little bit more about how you would lay the Zonolite out and what
23 type of play activity would involve the use of the figurines?

¹⁰ *Id.* at 34-35.

¹¹ Bergman Decl., Ex 4, Deposition of Kenneth Hartle at 36.

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2 A. We would build mounds out of it because it's fun to play with. You know,
3 you can build things out of it. It blows around real easy, so you can crash into
4 it, drive things through it. During the 4th of July, we would go to fireworks
5 stands because we always had money because we were helping Dad out. We
6 would buy firecrackers, and then we would set up dioramas with the figurines
7 and the Army guys and use the firecrackers to blow things up, you know. It
8 was kind of a fun activity.¹²

9 By the mid-1980s, Ken Hartle had formed Heritage Hearths and worked in installation and
10 maintenance of wood stoves throughout Flathead County. Part of this work involved relining old
11 brick chimneys with metal stove pipe to ventilate new fireplace inserts and woodstoves that they
12 were installing inside homes. Ken would pour a mixture of Portland cement and Zonolite into the top
13 of the chimney to fill the gap between the square brick chimney flue and the round metal stovepipe.
14 Jeremy worked with his dad almost everyday afterschool, on weekends and during the summer.
15 During furnace relining jobs, Jeremy's job was to mix the Zonolite and cement in a mixer pour the
16 material into a bucket and pull it up to his dad on with a rope and pulley. He described this work as
17 follows:

18 We would mix that with, like I said, the Portland cement and the Zonolite and
19 mix it with a little bit of water and get it to a consistency that you could
20 basically make a snowball out of, and we would pour that down the chimney,
21 and if you got it too wet, it would stack up just in the bottom. You know, it
22 would just compact in the bottom of the chimney. But we would get for the
23 fluffy consistency so that it would build up and stack up inside the chimney to
create a thermal barrier inside of there and stabilize the pipe.¹³

¹² Bergman Decl., **Ex. 3**, Deposition of Jeremiah Hartle at 41.

¹³ *Id.* at 49.



C. Robinson Manufactured and Supplied the Zonolite to Which Jeremiah Hartle Was Exposed

Robinson was a Montana company that owned and operated a vermiculite expansion Plant in Cascade County, Montana where asbestos-containing vermiculite ore from the Libby, Montana W.R. Grace mine was processed and sold as Zonolite brand vermiculite products.¹⁴ Ken Hartle, testified that he purchased Zonolite expanded vermiculite used in his masonry business from Western Building Center (WBC).¹⁵ His testimony is corroborated by actual invoices from the late-1970s showing purchases of Zonolite from WBC.¹⁶ Deposition testimony by WBC's Rule 30(b)(6) designee establishes that all Zonolite sold by Western Building Center during this time period was manufactured and supplied by Robinson Insulation through a salesman named Tom Storfa.¹⁷ Finally, Grogan-Robinson's Rule 30(b)(6) designee and its

¹⁴ The Court's March 23, 2018 Order Appointing the Robinson Insulation Receiver.

¹⁵ Bergman Decl. **Ex. 4**, Deposition of Kenneth Hartle's at 50-51.

¹⁶ Bergman Decl. **Ex. 6**, Heritage Hearth Invoice from Western Building Center dated 12/14/1990.

¹⁷ Bergman Decl. **Ex. 7**, 30(b)(6) Deposition of WBC at 27-29.

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2 former owner confirmed that the Zonolite manufactured by Robinson was distributed to WBC by
3 Grogan-Robinson through its salesman, Tom Storfa.¹⁸

4 **D. Plaintiffs' Litigation Against Robinson Entities**

5 Robinson was voluntarily dissolved on October 24, 1989.¹⁹ On March 23, 2018, the
6 Court entered an order establishing a receivership to oversee the administration of Robinson's
7 potential insurance assets and pending asbestos personal injury claims against Robinson.²⁰
8 Attorney Nancy Gibson was appointed as the Receiver for Robinson.²¹ Following a consent
9 motion by counsel for the Libby Plaintiffs, the Court issued a further order on January 23, 2020
10 authorizing the Receiver to pursue "litigating and/or settling the issues presented by the coverage
11 litigation"²² with respect to Robinson's insurers, including cooperating with insurance defense
12 counsel to protect Robinson in the underlying claims and fulfill Robinson's duty to cooperate
13 with its insurers.²³

14 For more than two years, the Hartles litigated their claims against Robinson Insulation,
15 Grogan-Robinson (doing business as Lumber Yard Supply) and other defendants in a separate
16 suit filed in the Montana District Court for Flathead County.²⁴ The Hartles engaged in extensive
17 litigation and discovery with Robinson Insulation including written discovery, document
18 production, Rule 30(b)(6) depositions, expert witness reports, deposition of the parties respective
19 experts dispositive motion practice and motions in limine.²⁵ At the time of settlement on April

20 ¹⁸ Bergman Decl. **Ex. 8**, 30(b)(6) Deposition of Grogan-Robinson 30(b)(6) at 28-30.

21 ¹⁹ March 23, 2018 Order Appointing Robinson Receiver ¶ 1.

22 ²⁰ *Id.* at ¶5.

23 ²¹ *Id.* at ¶1(a)-(d).

²² January 23, 2020 Order Approving Settlement Negotiation ¶ (1).

²³ *Id.* at ¶ (8)(g).

²⁴ Bergman Decl., **Ex. 9**, Rule 16 Scheduling Orders from *Hartle, et al. v. Conagra Brands, Inc., et al.*, Cause No. DV-2018-532 (Mont. Dist. Ct. Flathead Cnty).

²⁵ *Id.*

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2 11, 2020, the parties were awaiting pre-trial rulings and preparing for a trial date set in April 20,
3 2020.²⁶

4 **E. The Asbestos Claims Court has approved the Hartles' Settlement**

5 On April 20, 2020, this Court issued an order approving the settlement agreement
6 between the Hartles, Robinson Insulation, and its insurers with respect to the Hartles' underlying
7 case pending in the Montana District Court for Flathead County, Cause No. DV-15-2018-532B
8 (J. Robert Allison presiding).²⁷ The Order was entered following a joint motion by the Receiver
9 for Robinson Insulation, Nancy Gibson, and the Hartles' counsel.²⁸ The terms and amount of the
10 Hartles' settlement with Robinson, based on an in camera review of the parties' confidential
11 settlement agreement, was "fully and finally approved" by the April 20th Order.²⁹ The April 20th
12 Order further provided that the proceeds of the Hartles' settlement shall be paid to the Receiver
13 and held "until such time as this Court rules on a motion by the Hartles for distribution."³⁰ And
14 "[a]ny concerns of the Libby Plaintiffs or others with respect to any limited funds of indemnity
15 insurance coverage of claims against Robinson will be addressed upon such motion."³¹

16 **F. The Hartle Case Resulted in Significant Benefit to All Libby Claimants**

17 As a result of the extensive discovery efforts by the Hartles' counsel, insurance assets
18 pertaining to Robinson Insulation were discovered. Additionally, and multiple depositions of
19 Robinson Insulation and its current owners established the independent liability of Grogan
20 Robinson as a seller of Zonolite manufactured by Robinson Insulation and determined the chain

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22 ²⁶ *Id.*

23 ²⁷ April 20, 2020 Order Approving the Hartle Settlement ¶ (1).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at ¶ 2.

³¹ *Id.* at ¶ 3.

1 of distribution of these products throughout Montana. These efforts will benefit other claimants
2 who may have been exposed to Libby vermiculite products manufactured by Robinson
3 Insulation.³²
4

5 **G. Robinson’s Creditors, including the Libby Plaintiffs, are Represented by the**
6 **Robinson Receiver and Separate Counsel**

7 The interests of other potential claimants who may have claims based on exposure to
8 Libby vermiculite products manufactured by Robinson Insulation are adequately represented.
9 First, on March 23, 2018, this Court created a receivership to manage insurance claims for
10 Robinson Insulation and Receiver Nancy Gibson continues to fulfill that role.³³ Second, the other
11 potential Robinson Insulation claimants are represented by experienced counsel from McGarvey,
12 Heberling, Sullivan & Lacey and Kovaich Snipes Johnson P.C.³⁴ Neither the Receiver, nor
13 counsel for the Libby Plaintiffs has raised an objection to the disbursement of the Hartles’
14 settlement funds.³⁵

15 **III. EVIDENCE RELIED UPON**

16 The Hartles rely upon the Declaration of Matthew Bergman and Exhibits thereto filed in
17 support of this Motion.

18 **IV. AUTHORITY & ARGUMENT**

19 **A. The Court’s Authority to Approve Disbursement**

20 Section 27-20-101 et seq., MCA provides for a receivership to protect the assets
21 contained within Robinson’s liability insurance policies as part of the receiver’s role to “take
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23 ³² Bergman Decl. **Ex. 8**, 30(b)(6) Deposition of Grogan-Robinson 30(b)(6) at 28-30.

³³ March 23, 2018 Order Appointing Robinson Receiver.

³⁴ Certificate of Service List for March 23, 2018 Order Appointing Receiver.

³⁵ Bergman Decl. ¶4.

1 charge of the estate and effects” of, and “collect the debts and property due” a dissolved
2 corporation. A receiver has power, “under the control of the court” to bring and defend actions
3 secure and hold property compromise debts and make transfers. Section 27-20-301, MCA.
4 Pursuant to receivership law,³⁶ this Court appointed Nancy Gibson receiver for dissolved
5 Robinson Insulation Company to protect “the insurance assets of Robinson,” its “right to the
6 insurers’ defense” of Libby claims, and preserve and administer such “insurance assets for all
7 interested persons with [insured] claims.” March 23, 2018 Order.

8
9 A receivership is an equitable remedy. Its office is secure the interests of third parties,
10 such as an entity’s owners, the entity estate’s creditors and others with legal or equitable rights in
11 the receivership estate, and to secure court supervision over the receiver’s exercise of its powers.
12 The court has broad discretion in employing this equitable remedy in a variety of circumstances.
13 *Harrison v. Harrison*, 2019 MT149N, ¶ 15.

14 Specifically, the instant receivership is directed to third party claimants’ interest in
15 Robinson’s liability insurance coverage since the dissolved corporation remains subject to suit
16 notwithstanding the dissolution of the corporation. *Allen v. Atlantic Richfield Co.*, 2005 MT 281,
17 ¶16, 329 Mont. 230, 124 P.3d 132. Upon recognition that the receivership primarily serves to
18 secure the rights of such third-party claimants, this Court’s receivership Order contemplates that
19 litigation necessary to protect the insurance assets should be the responsibility of counsel for
20 such claimants. March 23, 2018 Order at ¶ (2)(a).

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23 ³⁶ See e.g. *Mieyr v. Fed. Sur. Co. of Davenport*, 97 Mont. 503, 34 P.2d 982, 985 (1934), aff’d, 294 U.S. 211, 55 S.
Ct. 356, 79 L. Ed. 865 (1935); *Little v. Little*, 125 Mont. 278, 285, 234 P.2d 832, 835 (1951); *Anderson v. Krafft-
Murphy Co.*, 82 A.3d 696, 697 (Del. Sup. Ct. 2013); *Penasquitos, Inc. v. Superior Court*, 53 Cal.3d 1180, 812 P.2d
154, 283 Cal.Rptr. 135 (1991).

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2 In addition to litigation, rights may be resolved by the receiver's exercise of a power to
3 "compromise." Section 27-20-302(3). This power includes compromise of claims against
4 Robinson by the Libby Plaintiffs as well as compromise of the insurers' duties of defense and
5 indemnity arising under Robinson's liability insurance coverages.

6 Consistent with these provisions, this Court's March 23, 2018 Order appointing the
7 Robinson Receiver granted authority for the Receiver to be "sued on behalf of Robinson in any
8 coverage dispute," accept service of process in such litigation (March 23, 2018 Order ¶1(d)),
9 tender defense (March 23, 2018 Order ¶1(b)), and make demands that the insurers settle (Order
10 ¶1(c)), but required that the Receiver obtain court approval of "specific proposals" for litigating
11 or settling such coverage litigation (March 23, 2018 Order ¶2 (a),(b)). On January 23, 2020, the
12 Court specifically authorized the Receiver to further engage in negotiation, litigation and
13 settlement of insurance coverage claims, including resolution of claims based upon the Hartles'
14 underlying case. On April 20, 2020, following *in camera* review of the Hartles' settlement
15 agreement with Robinson, the Court issued an order approving the Hartles' settlement and
16 stating that concerns by the Libby Plaintiffs with respect to any limited funds of insurance would
17 be addressed with respect to this motion for disbursement.

18 **B. Disbursement of the Hartles' Settlement Funds is Fair and Reasonable**

19 At the outset, it is important to note that Montana recognizes the authority of a receiver to
20 afford preference to one creditor or another consistent with its fiduciary duty owed to all
21 creditors. *State ex rel. Perry v. Dist. Court of First Judicial Dist. in & for Lewis & Clark Cty.*,
22 110 Mont. 533, 104 P.2d 1, 2 (1940). Indeed, funding that is traceable and held by a receiver in
23 trust for a specific creditor is may be disbursed to that creditor. *Fed. Land Bank of Spokane v.*

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2 *Gallatin Cty.*, 84 Mont. 98, 274 P. 288, 292 (1929).³⁷ The Court should approve disbursement of
3 the Hartles' settlement proceeds as fair and reasonable because 1) the amount of the settlement is
4 reasonable given the extraordinary damages suffered by the Hartles, 2) Robinson and Grogan-
5 Robinson faced tremendous risk and expense at trial, 3) the Settlement was a result of extensive
6 litigation and arms-length negotiation, and 4) the interests of Robinson and its creditors are
7 adequately represented by the Receiver and separate counsel, who do not object to disbursement.

8 1. *The Settlement amount is reasonable based on the Hartles' extraordinary*
9 *damages.*

10 All mesothelioma cases involve extensive damages due to terminal nature of the cancer
11 cause by asbestos. The Hartles' damages are exceptional even for a mesothelioma case. Mr.
12 Hartle is relatively young at 41 years old, he is the primary breadwinner for his family, again, his
13 prognosis is terminal, and Mr. and Mrs. Hartle have four school-aged children. The economic
14 damages alone to the Hartles were estimated to exceed \$3.5 million, including \$2.8 in economic
15 damages and \$800,000 in medical expenses.³⁸ In light of these specific facts, it was not
16 unreasonable to expect that a jury could award a verdict that far exceeded the settlement amount.
17 The damages would be available against Robinson and Grogan-Robinson based on Montana's
18 joint and several liability in product liability matters. *See Truman v. Montana Eleventh Judicial*
19 *Dist. Court*, 315 Mont. 165, 171–72, 68 P.3d 654, 659 (2003).

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23 ³⁷ *See also Mieyr v. Fed. Sur. Co. of Davenport, Iowa*, 97 Mont. 503, 34 P.2d 982, 986 (1934) (“An insolvent corporation, in the absence of statutory prohibition, may prefer one creditor over another; the rule being the same with reference to corporations as it is to individuals.”)

³⁸ Bergman Decl. **Ex. 5**, Report by Christina Tapia, Ph.D.

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2 2. *Robinson faced tremendous risk and expense at trial.*

3 Montana's law providing for strict liability for manufacturers and sellers of dangerous
4 products left Robinson Insulation and Grogan-Robinson few, if any, defenses. *See, e.g., Malcolm*
5 *v. Evenfall Co., Inc.*, 352 Mont. 325, 334, 217 P.3d 514, 520 (2009). A person who sells a
6 product in a defective condition is liable for the physical harm caused by the defective product.
7 Section 27-1-719, MCA; *Wise v. Ford Motor Company*, 284 Mont. 336, 340, 943 P.2d 1310,
8 1312 (1997). A product is defective if it is dangerous to an extent beyond that anticipated by the
9 ordinary user. *McAlpine v. Rhone-Poulenc Ag Co.*, 2000 MT 383, ¶ 25, 304 Mont. 31, 16 P.3d
10 1054; Mont. Pattern Jury Instr. Civ. 7.01 (2d rev. ed.2003).

11 At the time of settlement in early-March 2020, Robinson and Grogan-Robinson were
12 faced with an imminent trial date of April 20, 2020. Given the applicability of Montana's strict
13 product liability law and limited statutory defenses in combination with clear evidence
14 establishing Robinson and Grogan-Robinson manufactured and supplied the Zonolite that caused
15 Mr. Hartle's injuries, the likelihood of a defense verdict was small. Verdicts in other recent
16 mesothelioma verdicts with less compelling damages³⁹ confirm the reasonableness of the

17
18 ³⁹ While there are no plaintiffs' verdicts in Montana in product liability claims arising from asbestos exposures,
19 recent verdicts in Washington and Oregon asbestos cases are instructive of the verdict potential in this case. In
20 2009, a jury awarded \$10,200,000 to a living 70-year-old mesothelioma plaintiff in the Western District of
21 Washington. *Barabin v. Astenjohnson, Inc.*, No. C07-1454RSL, 2010 WL 1506430, at *1 (W.D. Wash. Apr. 14,
22 2010) (unpublished), *judgment vacated on other grounds* (Apr. 14, 2010). In 2013, a King County jury awarded just
23 over \$6,000,000 to the family of an 81-year-old mesothelioma victim. *Estenson v. Caterpillar Inc.*, No. 71429-5-I,
2015 WL 5224161, at *3 (Wash. Ct. App. Sept. 8, 2015) (unpublished). In 2015, Plaintiffs' counsel attained a
\$3,500,000 verdict on behalf of a widowed deceased 80-year-old mesothelioma victim. *Brandes v. Brand Insulation,*
Inc., No. 14-2-21662-9 SEA (King County 2015). The next year in Multnomah County, Oregon, Plaintiffs' counsel
obtained an \$8.75 million verdict against Kaiser Gypsum in a case involving a 69 year old living mesothelioma
victim, David Hoff, exposed to asbestos-containing joint compound. *Hoff v. Kaiser Gypsum Co.*, No. 15CV23996
(Multnomah County 2016). Most recently, in October 2019 the undersigned counsel secured a \$4.25 million verdict
in a mesothelioma case involving an 80 year old plaintiff who was exposed to asbestos while working in a shipyard
in the 1960s. *Everson v. ABB, Inc., et al.*, No 19-2-02422-4 SEA (King County Sup. Ct. 2019).

1 Hartles' settlement with Robinson and Grogan-Robinson. As such, the decision by the Receiver
2 and Robinson's insurers to enter into the Settlement agreement was reasonable in that it avoided
3 potential liabilities from a trial verdict and expenses that could have far exceeded the amount of
4 the Settlement.

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6 3. *The Settlement was a result of a hard-fought litigation and arms-length negotiation.*

7 Prior to entering into the Settlement, the parties had engaged in more than two years of
8 hard-fought litigation, involving extensive written discovery and numerous depositions. At the
9 time of settlement, there were multiple pending motions that threatened to further limit the
10 defenses available to Robinson and Grogan Robinson. It is notable that this litigation effort,
11 undertaken at the individual expense of the Hartles and their counsel, resulted in the discovery of
12 additional insurance coverage for Robinson and Grogan-Robinson, which potentially benefits the
13 remaining Libby Plaintiffs with potential claims against Robinson. The eventual settlement
14 between the Hartles, the Robinson Receiver, and Robinson's insurers involved extensive
15 negotiation, with significant compromise on both sides.

16 4. *The interests of Robinson and the Libby Plaintiffs are adequately represented,*
17 *and their lack of objection is reasonable.*

18 Under Montana law, a "receiver is an officer of the court appointing him, and impartially
19 holds the assets of the insolvent entrusted to his care and keeping for the benefit of creditors and
20 others interested therein." *Fed. Land Bank of Spokane v. Gallatin Cty.*, 84 Mont. 98, 274 P. 288,
21 292 (1929). In addition, the Libby Plaintiffs who may have asbestos-related claims against
22 Robinson are represented by experienced counsel from the law firms of McGarvey, Heberling,
23 Sullivan & Lacey and Kovaich Snipes Johnson P.C. As such, the Libby Plaintiffs who may be
affected by disbursement of the Settlement have received notice and opportunity to be heard.

1 Both the Receiver and counsel for the Libby Plaintiffs have had an opportunity to assess the
2 Hartles' Settlement and independently evaluate the relative cost-benefit to Robinson, its insurers,
3 the Libby Plaintiffs and any other interested parties. No objections have been raised either at the
4 time this Court approved the Hartles' settlement agreement, nor in connection with this Motion
5 for disbursement.
6

7 And this lack of objection makes sense. The decision of the Receiver and the Robinson
8 Insulation insurers to approve the Hartles' settlement and disburse the proceeds is reasonable
9 where the relative valuation of the impact of the Hartle settlement upon the pool of insurance
10 funds available for the Robinson Insulation claimants is uncertain. As the Court recognized in its
11 April 20, 2020 Order, there is a substantial benefit to Robinson Insulation from the Hartles'
12 settlement in the form of a release of the Hartles' claims against Robinson. Without their release,
13 the Hartle Plaintiffs could potentially obtain a far higher award at trial, which would have
14 resulted in significantly less funding available to other claimants. In order to obtain the benefit of
15 this release, the Receiver must complete its obligations under the settlement agreement and
16 disburse the proceeds to the Hartles.

17 Disbursement is also consistent with the interests of Robinson's other creditors, i.e., the
18 Libby Plaintiffs. Absent statutory directive, Montana courts do not interrupt the "race of
19 diligence" by creditors of a dissolved corporation, even an insolvent one. *Mieyr v. Fed. Sur. Co.*
20 *of Davenport, Iowa*, 97 Mont. 503, 34 P.2d 982, 986 (1934). Given the limited pool of insurance
21 proceeds that were discovered by the Hartles during their litigation, a large verdict in favor of the
22 Hartles and resulting judgment would have resulted in an even greater loss of remaining
23 insurance proceeds for the Libby Plaintiffs. Given the imminent trial date in the Hartles' case, it

1
2 is logical that the Libby Plaintiffs would assess a net benefit from the settlement and release of
3 the Hartles' claims.

4 **V. CONCLUSION**

5 For the above reasons, the Hartle Plaintiffs request that the Court approve disbursement
6 of the Settlement proceeds held by the Receiver for Robinson Insulation.

7 DATED this 17th day of June 2020.

BERGMAN DRAPER OSLUND, PLLC

8 By /s/ Matthew P. Bergman

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23

CERTIFICATE OF SERVICE

I, Ethan Aubrey Welder, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 06-18-2020:

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Representing: Ace Fire Underwriters Companyh
Service Method: eService

Electronically Signed By: Ethan Aubrey Welder
Dated: 06-18-2020