

Mark M. Kovacich  
Ben A. Snipes  
Ross T. Johnson  
ODEGAARD KOVACICH SNIPES, P.C.  
P.O. Box 2325  
Great Falls, MT 59403  
(406) 761-5595  
[mark@mttriallawyers.com](mailto:mark@mttriallawyers.com)  
[ben@mttriallawyers.com](mailto:ben@mttriallawyers.com)  
[ross@mttriallawyers.com](mailto:ross@mttriallawyers.com)

Attorneys for OKS Plaintiffs

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA  
Cause No. AC 17-0694

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IN RE ASBESTOS LITIGATION,  
  
*Consolidated Cases.*

THIS DOCUMENT RELATES TO:  
Cascade County Cause No. DV-19-799;  
Cascade County Cause No. DV-20-368;  
Cascade County Cause No. DV-19-426;  
Cascade County Cause No. DV-19-245;  
Cascadae County Cause No. DV-19-812.

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**OKS PLAINTIFFS' UNOPPOSED MOTION FOR COURT  
APPROVAL OF ATTORNEY FEES**

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Plaintiffs represented by Odegaard Kovacich Snipes, P.C., who are the “OKS Libby Mine Claimants” as used in the Memorandum of Understanding dated 12/22/2020, through their counsel of record, move the Court in accordance with § 2-9-314, MCA, to approve the contingent fee agreement between Plaintiffs and their counsel. Section 2-9-314, MCA, provides that when an attorney represents a claimant on a tort claim against the State, the attorney fee must be approved by the District Court.

## **BACKGROUND**

Before this Court, upon joint motion of the parties, is this Court acceptance of jurisdiction of the consolidated tort claims in *Rayson, et al. v. State of Montana, et al.*, Cascade County Cause No. DV-19-799; *Peterson v. State of Montana, et al.*, Cascade County Cause No. DV-20-368; *Rayson v. State of Montana, et al.*, Cascade County Cause No. DV-19-426; *Siefke v. State of Montana, et al.*, Cascade County Cause No. DV-19-245; and *Warren v. State of Montana, et al.*, Cascade County Cause No. DV-19-812. Also before this Court, upon joint motion of the parties, is the approval of the settlement reached between the OKS Libby Mine Claimants and the State of Montana. The specifics of the consolidation and the terms of the settlement between the OKS Libby Mine Claimants and the State of Montana are set forth in the Joint Motion Approving Consolidation and Petition for Order Approving Settlement and of Dismissal With Prejudice filed with this Court. As set forth therein, a total of \$754,000 will be paid, funded by payments from the State of Montana. The State of Montana's payment will be made from the State of Montana's self-insurance reserve fund. A contingent payment of up to \$263,900 will be paid to OKS Libby Mine Claimants by the State of Montana dependent on the resolution of the State's litigation with National Indemnity Company per the terms of the Memorandum of Understanding of Settlement Agreement. These payments resolve the OKS Libby

Mine Claimants' claims against the State of Montana, but the Claimants expressly reserve their claims against all other responsible parties.

The OKS Libby Mine Claimants' motion to approve attorney fees is based on the contingent fee agreements entered into between the OKS Libby Mine Claimants and their counsel. The attorney fee agreements with Odegaard Kovacich Snipes, P.C., call for the payment of 33<sup>1</sup>/<sub>3</sub>% of any recovery obtained due to the efforts of counsel if an action has been filed on behalf of the OKS Libby Mine Claimants.

Beginning in the late 1960's and increasingly into the 1990's, Zonolite Mining Company/W.R. Grace (collectively "Grace") employees, former employees, and family members made claims against Grace for asbestos-related diseases. Many claims settled, various cases were tried to verdict, and certain cases involved appeals to the Montana Supreme Court and the U.S. Ninth Circuit Court of Appeals. The OKS Libby Mine Claimants included in this settlement allege that the State of Montana is liable in damages for the asbestos-related diseases suffered. In 2004, the Montana Supreme Court in *Orr v. State of Montana*, 324 Mont. 391, 106 P.3d 100 (2004), considered the legal duty to the Libby Miners. The Court held the State had a duty to protect the safety and health of the Libby Miners and to warn of known dangers associated with their workplace. The Court also held that the State was not shielded by application of the public duty doctrine.

In 2009, a settlement was reached between the State and former miners, miner family members, and community members. Subsequent settlements were reached in 2016 and 2018. Since the last settlement in 2018, 26 Odegaard Kovacich Snipes, P.C., clients filed claims against the State of Montana. Negotiations on these claims led to a mediation conference on December 2, 2020. The mediation conference was presided over by settlement master Mick Taleff. Legal counsel of the OKS Libby Mine Claimants, the State of Montana, and National Indemnity Company participated in the mediation conference. As a result of the formal mediation conference, the parties entered into a Memorandum of Understanding of Settlement Agreement ("MOU"), dated January 8, 2021. The MOU addressed numerous topics including the amount of settlement, the form of the releases to be utilized, payment of the settlement amount into a Qualified Settlement Fund Trust (QSF), resolution of W.R. Grace Indirect Claims, and the process for obtaining Court approval of the settlement. A copy of the MOU has been attached to the Joint Motion Approving Consolidation and Petition for Order Approving Settlement and of Dismissal with Prejudice, as Exhibit A thereto. Following the execution of the MOU, the parties, through their counsel of record, have been involved in the preparation and execution of the requisite releases, negotiation of Medicaid and Medicare issues, establishment of the QSF, and the administration and consolidation of tort cases in the First Judicial District.

Section 2-9-314(2), MCA, provides in relevant part that when reviewing attorney fees, the Court should consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the Court may consider appropriate. In *Stimac v. State*, 248 Mont. 412, 417, 812 P.2d 1246, 1249 (1991), the Montana Supreme Court instructed that the following factors should be considered by a District Court when assessing the reasonableness of an attorney fee: (1) the novelty and difficulty of the legal and factual issues involved; (2) the time and labor required to perform the legal service properly; (3) the character and importance of the litigation; (4) the result secured by the attorney; (5) the experience, skill, and reputation of the attorney; (6) the fees customarily charged for similar legal services at the time and place where the services were rendered; (7) the ability of the client to pay for the legal services rendered; and (8) the risk of no recovery.

Since the 2004 *Orr* decision, the OKS Libby Mine Claimants and the State of Montana have litigated a number of claims arising out of the State's alleged actions/inactions at the W.R. Grace operations in and near Libby, Montana. Over the last 18 years, the litigation with the State has included the exchange of comprehensive written discovery, complex and detailed expert reports on liability and damages, taking of numerous depositions, and briefing of complex motions. The facts and legal theories involved in the litigation are extraordinarily complex and involve numerous disputed factual questions and unresolved legal questions. The OKS Libby Claimants'

counsel has dedicated several thousand hours to these efforts. In addition, counsel for Plaintiffs have incurred significant costs as a result of this litigation, all pursuant to contingent fee agreements, thereby incurring substantial risk without the certainty of recovery of fees or costs. In sum, representation of the OKS Libby Mine Claimants has involved more than a decade of litigation on multiple fronts, before various state, federal, and administrative tribunals, and appeals perfected in both state and federal courts of appeal. Here, efforts of counsel have resulted in a significant monetary recovery by way of the settlement reached in this litigation with the State of Montana. As recognized by the parties, the cases and claims against the State of Montana involve numerous disputed factual questions and unresolved legal issues of extreme complexity.

Given the complexity of the litigation and the numerous disputed factual questions, the parties believe the contingency fee agreements are fair and reasonable and comport with the standard fee associated with contingency fee agreements. Counsels' representation of the OKS Libby Mine Claimants is subject to a standard  $33\frac{1}{3}\%$  contingent fee contract. The settlement reached with the State of Montana has been fully approved by each OKS Libby Mine Claimant, inclusive of the contingent attorney fee that results by operation of the settlement. Where the subject of a contingent attorney fee contract does not offend public policy, it will be enforced according to its terms. *Frank L. Pirtz Const., Inc. v. Hardin Town Pump, Inc.*, 214

Mont. 131, 139, 692 P.2d 460, 464-65 (1984), citing *Gross v. Holzworth*, 151 Mont. 179, 440 P.2d 765 (1968); *Wight v. Hughes Livestock Co.*, (Mont. 1983), 664 P.2d 303, 40 St.Rep. 696.

Counsel for the State has been contacted and do not oppose this motion. A proposed order is enclosed for the court's consideration.

Based upon the foregoing considerations, and pursuant to the terms of § 2-9-314, MCA, Court approval of the contingent fee is requested.

DATED this 24<sup>th</sup> day of March, 2020.

ODEGAARD KOVACICH SNIPES, P.C.

By: /s/ Mark M. Kovacich  
Mark M. Kovacich  
P.O. Box 2325  
Great Falls, MT 59403  
Attorneys for OKS Plaintiffs

## CERTIFICATE OF SERVICE

I, Mark M. Kovacich, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 03-24-2021:

Amy Poehling Eddy (Attorney)  
920 South Main  
Kalispell MT 59901  
Representing: Amy Eddy  
Service Method: eService

Roger M. Sullivan (Attorney)  
345 1st Avenue E  
MT  
Kalispell MT 59901  
Representing: Adams, et al  
Service Method: eService

Allan M. McGarvey (Attorney)  
345 1st Avenue East  
Kalispell MT 59901  
Representing: Adams, et al  
Service Method: eService

John F. Lacey (Attorney)  
345 1st Avenue East  
Kalispell MT 59901  
Representing: Adams, et al  
Service Method: eService

Ethan Aubrey Welder (Attorney)  
345 1st Avenue East  
Kalispell MT 59901  
Representing: Adams, et al  
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)  
345 First Avenue East  
Montana  
Kalispell MT 59901  
Representing: Adams, et al

Service Method: eService

Jeffrey R. Kuchel (Attorney)  
305 South 4th Street East  
Suite 100

Missoula MT 59801

Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC

Service Method: eService

Danielle A.R. Coffman (Attorney)

1667 Whitefish Stage Rd

Kalispell MT 59901

Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC

Service Method: eService

Gary M. Zadick (Attorney)

P.O. Box 1746

#2 Railroad Square, Suite B

Great Falls MT 59403

Representing: Honeywell International

Service Method: eService

Gerry P. Fagan (Attorney)

27 North 27th Street, Suite 1900

P O Box 2559

Billings MT 59103-2559

Representing: CNH Industrial America LLC

Service Method: eService

G. Patrick HagEstad (Attorney)

2721 Connery Way

Missoula MT 59808

Representing: United Conveyor Corporation, Riley Stoker Corporation et al

Service Method: eService

Jennifer Marie Studebaker (Attorney)

210 East Capitol Street

Suite 2200

Jackson MS 39201

Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al

Service Method: eService

Joshua Alexander Leggett (Attorney)

210 East Capitol Street, Suite 2200

Jackson MS 39201-2375

Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al

Service Method: eService

Vernon M. McFarland (Attorney)

210 E. Capitol Street, Suite 2200  
Jackson MS 39201-2375  
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al  
Service Method: eService

Jean Elizabeth Faure (Attorney)  
P.O. Box 2466  
1314 Central Avenue  
Great Falls MT 59403  
Representing: Goulds Pump LLC, Grinnell Corporation, Borg Warner Morse Tec LLC  
Service Method: eService

Jason Trinity Holden (Attorney)  
1314 CENTRAL AVE  
P.O. BOX 2466  
Montana  
GREAT FALLS MT 59403  
Representing: Goulds Pump LLC, Grinnell Corporation, Borg Warner Morse Tec LLC  
Service Method: eService

Chad E. Adams (Attorney)  
PO Box 1697  
Helena MT 59624  
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.  
Service Method: eService

Katie Rose Ranta (Attorney)  
Faure Holden, Attorneys at Law, P.C.  
1314 Central Avenue  
P.O. Box 2466  
GREAT FALLS MT 59403  
Representing: Borg Warner Morse Tec LLC  
Service Method: eService

Stephen Dolan Bell (Attorney)  
Dorsey & Whitney LLP  
125 Bank Street  
Suite 600  
Missoula MT 59802  
Representing: Ford Motor Company  
Service Method: eService

Dan R. Larsen (Attorney)  
Dorsey & Whitney LLP  
111 South Main  
Suite 2100  
Salt Lake City UT 84111

Representing: Ford Motor Company  
Service Method: eService

Robert J. Phillips (Attorney)  
Garlington, Lohn & Robinson, PLLP  
P.O. Box 7909  
Missoula MT 59807  
Representing: BNSF Railway Company  
Service Method: eService

Emma Laughlin Mediak (Attorney)  
Garlington, Lohn & Robinson, PLLP  
P.O. Box 7909  
Missoula MT 59807  
Representing: BNSF Railway Company  
Service Method: eService

Daniel Jordan Auerbach (Attorney)  
201 West Railroad St., Suite 300  
Missoula MT 59802  
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company  
Service Method: eService

Leo Sean Ward (Attorney)  
PO Box 1697  
Helena MT 59624  
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.  
Service Method: eService

Robert B. Pfennigs (Attorney)  
P.O. Box 2269  
Great Falls MT 59403  
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.  
Service Method: eService

Robert M. Murdo (Attorney)  
203 North Ewing  
Helena MT 59601  
Representing: Mine Safety Appliance Company LLC  
Service Method: eService

Murry Warhank (Attorney)  
203 North Ewing Street  
Helena MT 59601  
Representing: Mine Safety Appliance Company LLC  
Service Method: eService

Ben A. Snipes (Attorney)  
Odegaard Kovacich Snipes, PC  
P.O. Box 2325  
Great Falls MT 59403  
Representing: Backen et al, Sue Kukus, et al  
Service Method: eService

Ross Thomas Johnson (Attorney)  
Odegaard Kovacich Snipes, PC  
P.O. Box 2325  
Great Falls MT 59403  
Representing: Backen et al, Sue Kukus, et al  
Service Method: eService

Randy J. Cox (Attorney)  
P. O. Box 9199  
Missoula MT 59807  
Representing: A.W. Chesterson Company  
Service Method: eService

Zachary Aaron Franz (Attorney)  
201 W. Main St.  
Suite 300  
Missoula MT 59802  
Representing: A.W. Chesterson Company  
Service Method: eService

Robert J. Sullivan (Attorney)  
PO Box 9199  
Missoula MT 59807  
Representing: Ingersoll-Rand, Co.  
Service Method: eService

Dale R. Cockrell (Attorney)  
145 Commons Loop, Suite 200  
P.O. Box 7370  
Kalispell MT 59904  
Representing: State of Montana  
Service Method: eService

Martin S. King (Attorney)  
321 West Broadway, Suite 300  
P.O. Box 4747  
Missoula MT 59806  
Representing: Foster Wheeler Energy Services, Inc.  
Service Method: eService

Maxon R. Davis (Attorney)  
P.O. Box 2103

Great Falls MT 59403  
Representing: Continental Casualty Company  
Service Method: eService

Tom L. Lewis (Attorney)  
2715 Park Garden Lane  
Great Falls MT 59404  
Representing: Harold N. Samples  
Service Method: eService

Keith Edward Ekstrom (Attorney)  
601 Carlson Parkway #995  
Minnetonka MN 55305  
Representing: Brent Wetsch  
Service Method: eService

William Rossbach (Attorney)  
401 N. Washington  
P. O. Box 8988  
Missoula MT 59807  
Representing: Michael Letasky  
Service Method: eService

Kennedy C. Ramos (Attorney)  
1717 Pennsylvania Avenue NW  
1200  
wash DC 20006  
Representing: Maryland Casualty Corporation  
Service Method: eService

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

Chad M. Knight (Attorney)  
1401 Walnut St  
Suite 200  
Boulder CO 80302  
Representing: BNSF Railway Company  
Service Method: eService

Anthony Michael Nicastro (Attorney)  
27 Shiloh Road, Ste 10  
Billings MT 59106  
Representing: BNSF Railway Company  
Service Method: eService

Nadia Hafeez Patrick (Attorney)  
929 Pearl Street Suite 350  
Boulder CO 80302  
Representing: BNSF Railway Company  
Service Method: eService

Kevin A. Twidwell (Attorney)  
1911 South Higgins Ave  
PO Box 9312  
Missoula MT 59807  
Representing: Libby School District #4  
Service Method: eService

Jennifer Jeresek Mariman (Attorney)  
345 First Avenue East  
Kalispell MT 59901  
Representing: Adams, et al  
Service Method: eService

James E. Roberts (Attorney)  
283 West Front Street  
Suite 203  
Missoula MT 59802  
Representing: BNSF Railway Company  
Service Method: eService

William Adam Duerk (Attorney)  
283 West Front Street  
Suite 203  
Missoula MT 59802  
Representing: BNSF Railway Company  
Service Method: eService

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

Nathan Andrew Huey (Attorney)  
201 West Main Street  
Suite 101  
Missoula MT 59802  
Representing: Robinson Insulation Company  
Service Method: eService

Mark S. Williams (Attorney)  
235 East Pine

PO BOX 9440  
Missoula MT 59807-9440  
Representing: Ace Fire Underwriters Companyh  
Service Method: eService

Michael Crill (Other)  
PO Box 145  
Rimrock AZ 86335  
Service Method: Conventional

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

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

Mike McMahon (Other)  
227 Broadway, Second Floor  
Helena MT 59601  
Service Method: Conventional

Jon A. Oldenburg (Other)  
P.O. Box 1124  
Lewistown MT 59457  
Service Method: Conventional

John W. Parker (Other)  
Cascade County Courthouse  
325 2nd Avenue North  
Great Falls MT 59401  
Service Method: Conventional

Greg Pinski (Other)  
415 2nd Ave N  
Great Falls MT 59401  
Service Method: Conventional

Dan Wilson (Other)  
Flathead County District Court  
920 South, Main, Suite 210  
Kalispell MT 59901  
Service Method: Conventional

Jon L. Heberling (Attorney)  
345 First Avenue East

Kalispell MT 59901  
Representing: Adams, et al  
Service Method: Conventional

Michael D. Plachy (Attorney)  
1200 17th Street  
Denver CO 80202  
Representing: Honeywell International  
Service Method: Conventional

Charles J. Seifert (Attorney)  
50 S. Last Chance Gulch 3rd Fl.  
P.O. Box 598  
Helena MT 59624  
Representing: Ford Motor Company, Maryland Casualty Corporation  
Service Method: Conventional

Fredric A. Bremseth (Attorney)  
601 Carlson Parkway, Suite 995  
Minnetonka MN 55305-5232  
Representing: Brent Wetsch  
Service Method: Conventional

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

Walter G. Watkins (Attorney)  
210 E. Capitol Street, Ste. 2200  
Jackson MS 39201  
Representing: International Paper Co.  
Service Method: Conventional

Nancy M. Erfle (Attorney)  
Gordon Rees LLP  
1300 SW Fifth Ave., Ste. 2000  
Portland OR 97201  
Representing: Robinson Insulation Company  
Service Method: Conventional

Electronically signed by Dawnell Komac on behalf of Mark M. Kovacich  
Dated: 03-24-2021