Asbestos Victims Win $43M Settlement

MATTHEW BROWN,Associated Press

BILLINGS, Mont. (AP) — A Montana judge has approved a $43 million settlement for more than a thousand asbestos victims who said state officials knew that dust from a mine was killing people but failed to intervene.

An estimated 400 people have been killed and 1,750 others were sickened by asbestos released from a W.R. Grace & Co. vermiculite mine outside the mountain town of Libby. Lethal dust from the mine once blanketed the small community about 40 miles south of the Canadian border, and asbestos illnesses were still being diagnosed more than two decades after the mine was shuttered.

District Judge Jeffrey Sherlock in Helena approved the settlement award, which stemmed from lawsuits filed against the state 10 years ago. Sherlock had dismissed the victims' claims in 2002, a decision the state Supreme Court overturned.

Former Libby resident Mike Nelson, who has been diagnosed with asbestosis, said he signed up for the settlement two years ago looking for closure. After learning Friday that it had finally been approved, Nelson said, it meant little to him at this point, as his relatives continue to die and his lung problems get worse.

"I've lost my father, my mother, my stepmother and my father in law," said Nelson, who now lives in Washington state. "They're all dead. All from asbestos ... W.R. Grace was the one responsible, but right now, I hate my government. The state knew. (The money) isn't going to do anything for me."

Nelson recalled as a child playing in the silos of a W.R. Grace plant near his house, where gold-tinted dust from processed vermiculite "piled up like snow" and made it hard to breathe.

A federally-sponsored cleanup of Libby and the nearby town of Troy continues at a cost to date topping $370 million. Environmental Protection Agency officials have said it may be years before the job is finished.

The majority of the claimants in the settlement are now 65 years or older.

The settlement stems from more than 200 lawsuits brought against Montana agencies for failing to protect victims in Libby. The state claimed in its defense that it had no legal obligation to provide warning of the mine's dangers.

Jon Heberling, an attorney for the plaintiffs, said on Friday that the state had just such a duty, but failed to live up to it. "This may be of help to families exhausted from providing 24-hour care for people dying of asbestos disease," Heberling said.

Court documents filed as part of the settlement list more than 1,300 victims who will receive payments ranging from $500 to more than $50,000 for those afflicted with lung cancer or mesothelioma.

To cover the settlement, Montana will pay $26.8 million from the state's self-insurance reserve fund and the National Indemnity Company will pay $16.1 million, according to court documents. The Montana Insurance Guaranty Association will pay the remaining $100,000.

The state did not admit liability as part of the settlement and those who signed it agreed to release the state from future claims.

Bill Gianoulias, chief defense counsel for Montana's Risk Management and Tort Division, said he could not comment beyond what was in the settlement papers because of ongoing litigation over the contamination in Libby.

"We expect there will be additional claimants," he said.

The money initially will go into a trust fund for distribution to the claimants. Heberling said when payments will go out is not certain because in some cases

Medicare liens need to be dealt with before money can be paid.

Sherlock also approved attorney fees estimated at roughly $14 million in an order entered Sept. 12. The Daily Inter Lake first reported the settlement.

Most of Libby's victims never worked in the mine but were sickened after family members brought mine dust home on their clothing or after spending their childhood playing among mine waste that littered the town of 3,000.

W.R. Grace escaped much of its liability for the contamination when it filed for bankruptcy after the extent of the public health crisis in Libby was revealed. But the terms of its bankruptcy reorganization have been appealed, and Heberling said there are active negotiations with the company over a possible settlement with victims in Libby.

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