W.R. Grace Inc.'s Prior Knowledge of Risks of Asbestosis Ignored in Federal Court

Contributed by moth
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This report will attempt to show that several corporate officers employed by W.R. Grace Inc., the defendants in a recent federal trial in Missoula, Montana were engaged in acts of criminal conspiracy to commit negligent homicide against their workers at the W.R. Grace's Zonolite brand vermiculite plant in Libby, Montana during several decades.

The Zonolite brand of vermiculite was mined and processed by W.R. Grace Inc. as insulation material, sold to homeowners during the '70s and '80s.
Zonolite vermiculite was packed in bags so consumers could pour it out into openings in between joists in the attics of homes after construction.
The main ingredient of Zonolite is vermiculite, a naturally occurring mineral found in and around Libby. Vermiculite has exfoliation properties,
meaning that it can expand to several times its original volume after being heated. This property results in vermiculite expanding to block any
airflow directly around the heated area, effectively trapping the heat inside. Despite the generally positive and safe properties of vermiculite
minerals, the supply of vermiculite that was mined in Libby was often contaminated with an uncommon yet incredibly dangerous form of asbestos fiber known as tremolite (Ceatus Media Group).

Over several months beginning at 2008 until the trial's end in 2009, evidence was presented to indicate that W.R. Grace Inc.'s corporate executives and certain members of management were engaged in a criminal conspiracy to silence any evidence of serious health risks caused by exposure to the tremolite vermiculite asbestos fibers. The final verdict of the Missoula Federal Court's Judge Donald Malloy was not guilty on all
charges, effectively letting W.R. Grace executives off the hook from any responsibility. However, there is reason to believe that this trial was not conducted in a fair and even handed manner by presiding Judge Donald Malloy, especially when the obvious nature of W.R. Grace's corporate executive's crimes were presented numerous times in court in a consistent
and scientifically accurate manner.

The defendants were several of W.R. Grace's corporate officers, and the prosecution was the U.S. federal government. After several months of evidence presented by the prosecution against W.R. Grace corporation showing that they had prior knowledge of severe health dangers faced by workers from exposure to vermiculite asbestos, Judge Malloy claimed that the evidence was all insubstantial since W.R. Grace's Libby plant closed down just before passage of the Clean Air Act in 1980.

After hearing several witness testimonies, W.R. Grace's prior knowledge of
dangerous tremolite asbestos fibers contained in their Zonolite vermiculite product and found around Libby's mines became more

apparent to
everyone listening. However, even this prior knowledge of severe health risks from exposure to tremolite asbestos would not result in a guilty verdict. The criminal provision of the Clean Air Act began in 1990, the same year W.R. Grace closed their Libby vermiculite mine and factory. The
prosecution was forced then to prove that W.R. Grace committed criminal acts after 1990. Even though W.R. Grace knowingly exposed their mine and factory workers and also the entire town of Libby to deadly tremolite asbestos fibers, during the Missoula trial Judge Donald Molloy oversimplified the case in his statement to the jury, "I hope we're not misleading you, but there is no violation of the law prior to 1990 because
it wasn't illegal." (Brayton -- Purcell, 2009). However, this itself is misleading, as the poisoning of the air in the Libby facility with asbestos went beyond simple pollution and resulted in physical harm to the
workers themselves, as would food poisoning or other direct attacks on the
worker's bodies.

Federal Judge Donald Malloy also showed clear bias against former W.R. Grace employee Robert Locke, one of the prosecution's main expert witnesses by nearly calling him a "liar". The defense lawyers attempted to
discredit Locke's testimony on the grounds that he suffered from chronic depression and their unsubstantiated claim that he may have had a personal
vendetta against W.R. Grace for firing him several years earlier as a result of his ongoing struggles with depression. However, Locke kept meticulous notes and was directly involved in supervising the handling of
the tremolite vermiculite asbestos mineral materials during his time at W.R. Grace.

Several other expert witnesses for the prosecution were either muzzled or
discredited by Judge Malloy also. The "not guilty" ruling by Missoula Federal Court's Judge Donald Malloy for the W.R. Grace corporate defendant's roles in knowingly giving their employees lung cancer from vermiculite asbestos exposure, results in the residents of Libby, Montana
and many others feeling that justice has not yet been served and in fact was derailed by an overtly pro-corporate bias on the part of Judge Donald
Malloy.

Once again the U.S. government has shown its inability to regulate and prosecute corporations who engage in dangerous and deadly practices. The W.R. Grace corporation literally got away with murder, and yet today well
paid Grace executives are free to enjoy their wealth of profits robbed from the hills and labor of Libby for their retirement, while the Grace workers killed by vermiculite asbestos exposure only get cold graves as their reward.

Making claims of judicial bias showing favoritism towards a corporate

defendant is nothing new, and the same pattern appears to repeat itself when corporations are put on public trial for environmental and human rights violations from knowingly exposing workers and residents to carcinogenic toxins. These false positive verdicts of "not guilty" fly into the face of reality and must be challenged on every level. Like going to a doctor, we must demand a "second opinion" or a second trial where expert witnesses are treated fairly and their testimonies are NOT excluded or condensed and available for the jury to hear in full detail. Throughout the trial, Judge Donald Malloy often invoked "Rule 403", effectively preventing large and possibly incriminating amounts of testimony and evidence from being heard (The David Law Firm, Mesothelioma Web).

Other expert witnesses for the prosecution were limited in their testimony. For example, in docket # 1103, the order from Judge Molloy to strike the testimony of Dr. Whitehouse is granted, though not the entire testimony is stricken. Judge Molloy strikes his critical prediction that Libby's CARD (Center for Asbestos Related Disease) will continue to see asbestosis related cases until 2030, claiming that Dr. Whitehouse lacks epidemiological knowledge to make such a prediction. Since Dr. Whitehouse makes this claim from his position on the frontline of treatment, his testimony is considered "unscientific" and has this statement stricken from the record. However, with a few mathematical equations, this predictive statement could also be proven by science. It is reasonable to support Dr. Whitehouse's prediction as being supported by statistical evidence of future projections of disease tracking (U.S. District Court, Montana Case File).

Other biased rulings by Judge Malloy include docket # 1089, which grants and denies the motion to exclude witness testimony from Melvin Burrett, based upon defense lawyers' objections in open court during Melvin's testimony. We do not know the content of what he said that was objected to by the W.R. Grace lawyers, nor which of their objections were overruled by Judge Malloy (U.S. District Court, Montana Case File).

In docket # 1062 defendant Bettacchi's motion to exclude evidence of demolition of Grace's buildings at the screening plant and mine are also granted and denied, as reflected in the court's rulings during Mr. Leroy Thoms's testimony, yet we do not know any specifics on what was allowed as evidence and what was suppressed (U.S. District Court, Montana Case File).

What is known and not subject to guessing games and whims of pro-corporate activist judges like Judge Donald Malloy is the peculiar history of W.R. Grace corporation's Nazi ties as found in documented literature.

The history began in 1928 when U.S.G.S. scientists found vermiculite deposits in Libby at least 100 million years old, with 100 foot wide by 1,000 foot long deposits. Ed Alley then heated layers of ore, which expanded and released trapped water as steam. He called the finished

product "Zonolite" and discovered many uses, including insulation (Peacock, 30-1).

Zonolite was also the name of Libby's initial vermiculite mining corporation that then was taken over by W.R. Grace in 1963. Here we are introduced to Earl Lovick, an employee of Zonolite who was transferred to Grace after the takeover. Even after his retirement in 1983, Lovick stayed with Grace as a paid consultant. "Earl Lovick knew that Zonolite was laced with asbestos, that alley's miracle ore was killing miners and maybe other townspeople, though he did nothing to warn them." (Peacock, 35-6)

Earl Lovick knew the form of asbestos in Zonolite's mine was called tremolite, a straighter fiber than the commercial forms of asbestos usually available to the public. He knew where in the plant the asbestos dust was leaking, and that over a third of the miners who worked at W.R. Grace in Libby were developing lung problems. He felt that employees were aware of the risks without being told, and that with respirator masks were safe. (Peacock, 35-6)

Bob Wilkins, a union representative, was not aware of the risks from tremolite asbestos until 1979, when he was told by a federal health inspector (Peacock, 38). The six story high dry mill used screens and shakers to separate the vermiculite from the surrounding rock matrix, and as a result was extremely dusty. The respirator masks given to employees during their time at the dry mill were either clogged or did not seal properly (Peacock, 39).

The background on J. Peter Grace reveals some connections and complicity with the Nazis during WW2, and including Nazi chemical conglomerate I.G. Farben's Dr. Otto Ambrose as management staff at Grace following WW2 and "Operation Paper Clip" when former Nazi scientists were transferred into positions in the U.S. government and private corporations like W.R. Grace (Peacock, 58-9).

The infiltration of former Nazi officials into U.S. government positions slowly became public knowledge when Ronald Reagan appointed J. Peter Grace to head up the Grace Commission, a federal agency directed to downsize protection and regulatory agencies in the government, including NIOSH (National Institute for Occupational Safety and Health). This appointment of a former Nazi supporter to a deregulatory agency was timed for when the health and safety regulators were preparing to investigate W.R. Grace after Scotts Company worker's asbestosis cases were linked to Zonolite materials that originated from W.R. Grace's factory in Libby.

Not only was J. Peter Grace a high level Reagan appointee to deregulate protective agencies in favor of corporations, Grace was also leader of the U.S. Council of the International Chamber of Commerce, and president of the Knights of Malta, an top secret Catholic organization with members of the CIA and Council on Foreign Relations (Scipes).

One of W.R. Grace corporation's biggest stockholders by 1980 was the Frick Group, known to have profited from Nazi takeovers of Jewish owned businesses. Following a written recommendation letter for a visa from J. Peter Grace, former I.G. Farben scientist Otto Ambrose was allowed into the U.S. Prior to the letter from Grace, Ambrose was unable to enter the U.S. due to knowledge of his war time position at I.G. Farben where he supervised poison gas operations at Auschwitz death camp (Scipes). Once Ambrose began working at W.R. Grace Inc., the former Nazi employee of I.G. Farben was able to continue his inhumane experimentation on the community of Libby, Montana. Instead of I.G. Farben's deadly Zylon-B gas, the chemical agents were now sharp minerals called vermiculite tremolite asbestos. That is how some officials in the U.S. government collaborate with industrialist war criminals at the expense of the health and welfare of their own people.

Peter Grace was also enabled by Ronald Reagan to cut the budgets of the regulatory agencies that were supposed to protect the health of Libby workers and residents. This resulted in a delay of the NIOSH investigation until 1987, only three years prior to W.R. Grace closing down the Libby plant. A company memo in 1980 discussed their options regarding the NIOSH proposal to study tremolite fibers at Grace's Libby location. Libby resident Gayla Benefield said that W.R. Grace preferred a pre-emptive epidemiological study combined with delay tactics and political pressure to distract NIOSH and stifle health data that could threaten their economic interests (Fritz, Cascadia Times).

Other tactics were used over the years to cover up essential details of health risks, such as the state of Montana conducting most of their routine air quality inspections during rainy weather of while the mill wasn't operating. In other cases the evidence was literally covered up; such as Libby's high school track originally built with tremolite mine tailings was later paved over with asphalt in 1982 (Fritz, Cascadia Times).

The same year that Libby's tremolite running track was paved over, Reagan appointed then W.R. Grace CEO J. Peter Grace as head of the Grace Commission, who then recommended deep cuts to the EPA, thus slowing their investigation of W.R. Grace's site in Libby. Gayla Benefield believes that

the Grace Commission's report resulted in the EPA dropping their investigation in 1982 after only two years of on site research. According to then EPA researcher Thomas Dixon, budget cuts forced the EPA to prioritize their work on asbestos in public schools (Fritz, Cascadia Times).

Benefield's personal involvement in the case continued, the daughter of Grace worker Perley Vatland and mother Margaret Vatland, both of whom died from asbestosis, was driven by the need for justice. "I started to carry the message to our elected officials, right up to the governor's office," Benefield says. Though former Montana Governor Marc Racicot's hometown was Libby, he never visited nor acknowledged that the asbestosis problem existed. Despite overwhelming evidence of statistics and reports from Montana State Board of Health as early as 1956, nobody in public office took any action (Fritz, Cascadia Times).

What ends up happening when corporate executives like J. Peter Grace of W.R. Grace are selected by unscrupulous politicians like Ronald Reagan to head up deregulatory agencies like the Grace Commissions that decide what forms of pollution and toxic exposures are worthy of safety investigations or not is the net effect of the fox guarding the henhouse, and the results are never pleasant for the people effected.

In a book review of "An Air That Kills" by Andrew Schneider and David McCumber, the link between the EPA's failure to follow up on its own investigation and the Grace Commission's official title as "Private Sector Survey on Cost Control" is recognized in a quote from the EPA's first administrator in 1970; William Ruckelshaus; "If Grace's company owned that mine in Libby or had any other major involvement with asbestos, (Peter Grace) shouldn't have been reviewing actions dealing with the regulation of the asbestos industry." (Holt, Counterpunch).

Schneider and McCumber continue to detail W.R. Grace's devious strategies such as reassigning employees who's X-rays showed signs of lung disease to jobs with lower exposure levels. Their calculated goal was to minimize any further exposures to asbestos dust so that early stage diseased employees would be able to work until retirement without becoming a higher cost medical liability. The company's advertised "Libby Medical Program" claimed to help workers, though Schneider and McCumber explain that it denied coverage to applicants and refused to pay for some of their medications and oxygen supplies (Holt, Counterpunch).

The last ruling from Judge Donald Malloy was given to chief corporate lawyer Mario Favorito on June 15 as a dismissal, since all other defendants were exonerated at an earlier date. The first three not guilty verdicts were given to Robert Bettacchi, Jack Wolter, and Henry Eschenbach on May 8. Their roles at W.R. Grace were senior vice president, vice president of the construction products division, and director of health, safety and toxicology for W.R. Grace. Out of the original seven defendants, the mine's general manager Alan Stringer was deceased in 2007, and towards the end of the trial the prosecution dropped charges against senior vice president Robert Walsh, and former general manager of the Libby mine, William McCaig (The David Law Firm, Mesothelioma Web).

As shown above in several examples, there was considerable foreknowledge on the part of the W.R. Grace executive officers that the tremolite asbestos fibers found at their Libby facility were indeed harmful to their workers over time. The corporate officers then made deliberate choices to limit exposures to the dangerous fibers in already exposed workers so that the corporation could get a few more years of work out of the ailing workers before they finally perished from asbestos related lung diseases, thus failing to collect any pensions or medical benefits from W.R. Grace. Regardless of the time frame, slow and controlled poisoning of people still amounts to homicide, yet W.R. Grace executives who participated in this decision making process were declared not guilty.

Following the not guilty verdict and the trial's end, on June 16th W.R. Grace's stock rose 96.3 percent above the March value of $6.80, now selling at $13.34 per share (The David Law Firm, Mesothelioma Web). How ironic that W.R. Grace can leave their Libby facility and nearly the entire town as a toxic superfund site with absolutely no legal responsibility yet continue to reap profits outside of the region. Under "corporate personhood" rules, corporations are given equal rights as living human beings yet are not held responsible in situations where ordinary humans would end up in prison for committing the same criminal acts. In this sense the corporate structure enables W.R. Grace's executive officials greater leeway to commit large scale crimes yet bear none of the consequences. We could imagine old school gangsters like Al Capone turning green with envy at the ability of the murderous corporate criminals of the W.R. Grace executive administration to evade and manipulate the justice system to their advantage.

In conclusion, most reasonable people expect there to be some common sense attached to verdicts of this magnitude. To simply dismiss decades of ecological destruction and physical harm to workers from asbestos exposure as irrelevant because these acts occurred prior to the passage of the

1980
Clean Air act ignores other laws already in existence. The simple and straightforward laws of 'do not knowingly cause harm to people working for
your business' also needs to be taken into consideration, and these protections existed the entire time W.R. Grace was operating their Libby facility. The years of exposure to asbestos is comparable to a hypothetical employee's cafeteria that placed small amounts of arsenic in
their chow with the intent that the corporation could avoid expensive retirement pension payments if the cumulative effects of the arsenic resulted in the early demise of the employees. If this were the case, most
reasonable judges would rule against the corporation for knowingly poisoning the food of their workers, though for some reason W.R. Grace's poisoning the air of the workplace environment is treated differently?

The final question we need to consider is when justice is derailed by the
U.S. federal courts, what other realistic options are there for restoring
balance of wrongs committed by W.R. Grace against the people of Libby? We
are asked to rely on the legal system to attain justice, yet when overt judicial bias is recognized and the legal system's inability to gain justice for the victims becomes apparent, where do people turn for balancing the scales of justice?

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Our correspondent moth lives car-free near the Great Basin. He formerly volunteered at Culture Change's Arcata office in 2003.

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