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## Chemical Company Is Acquitted in Asbestos Case

By [KIRK JOHNSON](#)

A federal court jury on Friday acquitted the big chemical products company W. R. Grace and three of its former executives on all charges that they had knowingly contaminated the small Montana mining town of Libby with asbestos, then conspired to cover up the deed.

At least 200 people have died of asbestos-related diseases and hundreds more have been sickened in Libby, population about 2,600. And there is no doubt that the Zonolite Mountain vermiculite mine, owned and operated by Grace from 1963 to 1990, was the source of the asbestos.

But the jury in Federal District Court in Missoula, deliberating for less than two days after a nearly three-month trial, unanimously concluded that the contamination was not criminal.

The verdict was a repudiation of the federal government's case, which portrayed Grace as a greedy mine operator, aware of the dangers created by its mining operations and then callously, criminally covering up its crime.

"The whole effort by the defense was to tell a different story of what happened in Libby," said David M. Bernick, the lead defense lawyer for Grace. That effort, he said, hinged on the same evidence that prosecutors used in the indictment: internal company memorandums showing Grace's efforts to understand and measure asbestos dating to the 1970s.

Prosecutors tried to convince jurors that the memorandums revealed a cover-up and a conspiracy; the defense argued that they instead showed the internal workings of a company grappling in good will over how to make the mine safer.

Naturally occurring asbestos was intermixed by geology with vermiculite in northwestern Montana. Vermiculite, an odd mineral that puffs up like popcorn when heated and is used for insulation and the leavening of garden soil, was mined commercially in Libby beginning in 1923, which also meant that decades of exposure to asbestos had occurred even before Grace bought the mine property.

Libby's mayor, Doug Roll, said news of the acquittal was still sinking in.

"Everybody is really disappointed," Mr. Roll said in a telephone interview. He said, though, that people who had been following news reports about the trial were braced for the verdict. "Over the last month, it was clear that it was not going well," he said.

Legal experts said the case was an uphill climb for prosecutors almost from the beginning.

Judge Donald W. Molloy refused, for example, to allow the jurors to see some evidence — ruling it overly prejudicial — including memorandums in which executives talked about the costs of people dying in Libby.

The timeline was also a problem. One charge in the indictment was under a provision of the federal [Clean Air Act](#) that did not take effect until 1990, the year Grace closed the mine. That left prosecutors needing to prove that company executives knowingly endangered mine employees and residents of Libby before it was illegal to do so, then continued to endanger people after the law went into effect.

The statute of limitations also required the government to prove that laws were violated after 1999 — within five years of the 2005 indictment — even though the mine had been closed for many years by then.

The company could have been fined millions of dollars in fines if convicted, while defendants faced prison time of up to 15 years on the most serious charges.

“This was always going to be a difficult case for the government,” said David M. Uhlmann, a law professor at the [University of Michigan](#) and a former environmental crimes prosecutor at the Justice Department who helped frame the case against Grace before leaving the department.

Prosecutors from the United States Attorney’s Office in Montana said in a brief joint statement with the Justice Department that the jurors had spoken.

“We thank them for their service,” the statement said. “We are refraining from further comment at this juncture.”

Marshalling the evidence was not the only problem for prosecutors, though. In late April, Judge Molloy denounced the star prosecution witness, Robert H. Locke, in open court, and raised doubts in front of the jurors about the practices of the prosecutors.

Mr. Locke, a former Grace executive, testified that Grace executives knew that asbestos was sickening people and that they actively worked to hide that knowledge. But after his testimony, evidence turned over by the prosecution showed that Mr. Locke had grossly understated on the witness stand how often he had met with prosecutors.

Judge Molloy told the jurors that the government had committed an “inexcusable dereliction of duty” by not providing evidence of that relationship sooner. He ordered the panel not to consider Mr. Locke’s testimony in considering the fate of one defendant, Robert J. Bettacchi, and to use “great skepticism” in evaluating Mr. Locke’s testimony about the case as a whole.

By then, only four defendants, out of eight in the original indictment, were left — the company and three executives, Mr. Bettacchi, Henry A. Eschenbach and Jack W. Wolter.

One former manager, Alan Stringer, died in 2007, and the cases against two men, Robert C. Walsh and William J. McCaig, were thrown out last month at the request of the prosecution. Another executive, O. Mario Favorito, was granted a separate trial that is pending.

Mr. Wolter, now retired — as were all the individual defendants — said in a telephone news conference with his lawyers that there was no question many people had suffered in Libby. “Our heart goes out,” he said. “But

**this trial was about other things.”**

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