

Texas Justices Agree To Hear BNSF, Zurich Asbestos Suit

By **Spencer Brewer**

Law360 (October 2, 2026, 9:09 PM EDT) -- The Texas Supreme Court Friday agreed to take up Zurich American Insurance Co.'s challenge to a finding that it must continue to pay for the defense of BNSF Railway against hundreds of asbestos exposure suits.

Zurich told the court in its briefing that Burlington Northern & Santa Fe Railway Co. exhausted its policies' limits after Zurich paid \$5 million toward an asbestos injury settlement. The lower intermediate appellate court **sided with the railway**, noting that the confidential settlement the insurer cited to purportedly show it exceeded its policy limit had no mention of the more than \$5 million payment Zurich said it made.

The panel determined that coverage of the litigation fell under the policy, but it did reverse a trial court's decision by agreeing to limit the insurer's exposure to a single ongoing occurrence.

In its brief to the state's high court, Zurich said that the lower court incorrectly held "that Zurich must prove it exhausted policy proceeds that would terminate the duty to defend — and further held that Zurich cannot satisfy this burden unless the insured agrees that the payment exhausted policy limits."

The insurance coverage dispute stems from underlying litigation brought by people alleging exposure to asbestos-contaminated vermiculite mined from the Vermiculite Mountain near Libby, Montana, according to court records.

Hundreds of people **sued BNSF** following exposure to asbestos, a naturally occurring mineral fiber found in rock and soil, over the course of decades in the town. The case arose out of the operation of a vermiculite mine in Libby that was responsible for 70% of all vermiculite mined in the U.S. between 1919 and 1990, according to the U.S. Environmental Protection Agency.

The owner of the mine, Zonolite Co., mined and shipped vermiculite, and BNSF's predecessor, Great Northern Railway Co., transported it. The two agreed to create a facility that would load the material directly onto BNSF's rail cars, and three insurance policies were purchased with the Zurich predecessor Maryland Casualty Co. that covered the facility.

W.R. Grace & Co. and its predecessors, including Zonolite, procured Zurich's premises-operations liability insurance covering the River Loading Facility for 1965 through 1974, according to court records. The three three-year policies had no aggregate limit with liability constraints of \$100,000 per person and \$500,000 per accident. The per accident occurrence was changed to a per occurrence limit in the latter two policies, the panel found.

After residents began suing in the late 1990s, BNSF started tendering lawsuits to insurers under policies it knew of at the time, which did not include Zurich's. It discovered evidence of the Zurich policies during its defense of the initial lawsuits, court records show.

Starting in 2006, Zurich began reimbursing BNSF for defense costs incurred by BNSF in defending Libby asbestos claims. BNSF demanded Zurich keep paying to defend it, while the insurer claimed that the policies in question, the first going back to 1965, provided a per-occurrence limit of liability that had been exhausted.

In its brief, BNSF said that the lower court misread the allegations and rendered portions of the policy meaningless.

"By rewriting both the pleadings and the policies, the court of appeals overstepped its interpretive duty," BNSF said. "Properly reviewed, the various lawsuits allege multiple accidents or omissions under the policies' unambiguous terms."

Representatives for the parties didn't immediately respond to a request for comment.

Zurich American is represented by Wallace B. Jefferson, William J. Boyce and Adam B. Shniderman of Alexander Dubose & Jefferson LLP and Roland K. Johnson of Harris Finley & Bogle PC.

BNSF is represented by David E. Keltner, Jody S. Sanders and Preston R. Mundt of Kelly Hart & Hallman LLP.

The case is Zurich American Insurance Co. v. the Burlington Northern and Santa Fe Railway Co., case number 25-0511, in the Texas Supreme Court.

--Additional reporting by Elizabeth Daley. Editing by Emily Kokoll.