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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. AC 17-0694

In re Asbestos Litigation,

Consolidated Cases.

BNSF'S RESPONSE TO
ARROWOOD'S MOTION TO
DECONSOLIDATE

Re: *BNSF v. Arrowood*; Cause No.: DV-14-225

Defendant BNSF Railway Company ("BNSF") files this Response to Arrowood Indemnity Company's ("Arrowood") Motion to Deconsolidate and Return to Montana Thirteenth Judicial District Court, Yellowstone County.

BNSF filed a declaratory judgment action asking the Court to determine whether three different insurers have a duty to defend and/or indemnify BNSF. The three insurers are Arrowood, Maryland Casualty Company, and Continental Casualty Company. Policies from these specific Insurers had been purchased by

W.R. Grace or its predecessors as required by the terms of a lease of premises near Libby, Montana.

On September 6, 2017, Judge Moses issued an Order staying all proceedings in BNSF's declaratory judgment action pending resolution of a similar declaratory judgment action filed in Tarrant County, Texas. Br. Support Mot. Deconsolidate & Return Mont. 13th Jud. Dist. Ct., Yellowstone County, Jan. 12, 2018, Ex. A: Order Re: Defs.' Mot. Dismiss or Stay & Pl.'s Mot. Amend.

The Montana Supreme Court consolidated, for pretrial purposes only, a number of cases involving asbestos-related claims. See Order Establishing Asbestos Claims Ct. & Consolidating Cases, Nov. 28, 2017. The Court provided that each individual case will ultimately be tried in the district court that had jurisdiction at the time of its consolidation. The Court included an "Exhibit A" which listed asbestos-related cases that it transferred to the Asbestos Court. BNSF's declaratory judgment action was included by the Court in this list.

Defendant Arrowood has filed a Motion to Deconsolidate this case and return it to Yellowstone County. BNSF believes Arrowood's motion is not proper in light of the stay already imposed in this case. When a stay is in place, a party "may not file any new motions." *State v. Mont. First Judicial Dist. Court*, 361 Mont. 536, 264 P.3d 518 (2011).

To properly proceed with its motion, Arrowood should have first filed a motion to lift the stay and then, if that motion were granted, filed its motion to deconsolidate. The stay that remains in place prohibited Arrowood from filing this motion.

BNSF believes that consideration of the merits of Arrowood's motion is premature. This case has been stayed pending resolution of the Tarrant County, Texas, declaratory judgment action. BNSF believes that this Court does not need to take any action related to this declaratory judgment action until after the Tarrant County, Texas action is resolved and the stay in this case has been lifted. At that time, Arrowood can refile its motion to deconsolidate and the merits of the motion can be considered.

DATED this 26th day of January, 2018.

/s/ Robert J. Phillips
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CERTIFICATE OF SERVICE

I, Robert J. Phillips, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 01-26-2018:

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