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IN THE SUPREME COURT OF THE STATE OF MONTANA	
IN RE ASBESTOS LITIGATION,	Cause No. AC 17-0694
<i>Consolidated Cases.</i>	REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' PROPOSED MASTER DISCOVERY

REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS'
PROPOSED MASTER DISCOVERY

As a threshold issue, Plaintiffs misconstrue the definition of “Master Discovery” and the Defendants’ understanding of this Court’s directive. The purpose of “Master Discovery” is to streamline the discovery process for the numerous plaintiffs and multiple defendants. Master Discovery limits discovery and prevents cumulative or duplicative requests when multiple defendants are involved in a plaintiff’s lawsuit. Plaintiffs are correct that it is the intent of the Defendants that this discovery be answered by each individual plaintiff. However, Plaintiffs’ objections do not align with the direction of this Court and the *Manual for Complex Litigation*, are not founded on Montana Law, and are premature.

Pursuant to this Court’s Order, the parties proposed Master Discovery was limited to thirty (30) interrogatories and thirty (30) requests for production of documents. Defendants in their proposed master set complied with the Court’s Order and limited their interrogatories to thirty (30) and their requests for production to twenty-one (21), which significantly streamlines discovery for Plaintiffs, even with the subparts to which Plaintiffs object. In the cases pending before the ACC, there are typically three (3) to five (5) defendants in each case. Pursuant to Montana Rule of Civil Procedure 33, each defendant is entitled to propound 50 interrogatories,¹ and Montana Rule of Civil Procedure 34 does not place a limit on the number of Requests for

¹ Plaintiffs’ counsel incorrectly asserts Rule 33 applies to all discovery.

Production. Thus, if each defendant were allowed the customary 50 interrogatories permitted by the Rules, Plaintiffs could be required to respond to 150 to 250 interrogatories and an unlimited number of requests for production. The Court's proposal for the adoption of master discovery in the ACC clearly benefits Plaintiffs so that any one plaintiff would not be required to respond to multiple sets of discovery. *Manual for Complex Litigation, Fourth* Section 11.4. This Court's Order will save costs and time associated with discovery as discussed in the *Manual for Complex Litigation, Fourth*, and Defendants support the decision of the Court to use Master Discovery. However, if Plaintiffs prefer to rely on the customary discovery rules, Defendants would be amenable to that approach as well.

Furthermore, Plaintiff's generally object to the number of subparts contained in Defendants' proposed master discovery and assert that each of these sub-parts should count as a separate request. Plaintiffs' assertion in this regard is without merit as each subpart is both logically and factually related to the primary question.² Additionally, "recipients of interrogatories are not entitled to object based on a selective count of the various clauses contained in the requests." *Richardson v. State*, 130 P.3d 634, 644 (Mont. 2006). Moreover, the Montana Supreme Court requires that an objecting party provide an explanation as to how it determines the number of subparts in requests for interrogatories. *Id.* at 643-44. Once the definition is provided and accepted by the Court, then a counting of the interrogatories can be made. Plaintiffs failed to provide any such explanation or identify specific clauses of the

² For example, Interrogatory No. 3, states, "For any and all marriages please identify the full name and last known address of each spouse; the date and place of each marriage; the date each marriage was terminated; how each marriage was terminated; and if you are currently married, please state your spouse's date of birth, spouse's current employer(s) and the amount of spouse's wages or salaries. Also, please state the names, ages, and present address of each of your children." Each item requested is logically and factually related to the Plaintiffs' marriage(s).

interrogatories as discrete subparts. Instead, Plaintiffs set forth only a blanket objection. Accordingly, their objection to the number of interrogatories should be overruled by this Court.

Further, Plaintiffs prematurely object to 23 interrogatories and every request for production. Again, the Plaintiffs' appear misconstrue the purpose of determining a set of "Master Discovery" and seemingly overlook the substantial benefits that the proposed set of master discovery provides in streamlining the discovery process. Plaintiffs' objections are premature because the validity of those objections cannot be ascertained until applied to a specific plaintiff. It is unclear if Plaintiffs' objections are applicable and have merit until they are reviewed in relation to a specific plaintiff in a particular case. If the objections become ripe and applicable to a specific plaintiff, Plaintiffs should engage in good faith discussions with Defendants to address their concerns and attempt to resolve any issues in advance of requesting intervention by the Court. If and only if discussions among the parties prove fruitless, then plaintiffs' specific objections in individual cases should be presented to this Court for resolution. Defendants carefully crafted the proposed master discovery and endeavored not to request any information that is irrelevant to the proceedings before this Court or that would not lead to discoverable information.

Plaintiffs also mischaracterize Defendants' access to certain information about specific plaintiffs' personal histories where they assert that said information is "equally available by the Libby Defendant employer." Even if a particular defendant employed a plaintiff for some period of his or her life, that does not mean that all Libby employers have all information pertaining to that plaintiff's entire work history. Unfortunately, Plaintiffs did not reach out to Defendants to resolve these discovery issues as discussed in the *Manual for Complex Litigation* Section 11.424.

The frivolity of their objections is further evidenced by their lack of proper grounds as many of the objections have no valid basis in Montana law.

For the foregoing reasons, Defendants ask this Court to overrule Plaintiffs' objections to Defendants' Master Discovery or in the alternative withhold judgment until the requests are propounded upon a specific Plaintiff and the parties have had an opportunity to address Plaintiffs' objections informally on a case by case basis. Defendants further ask this Court to adopt the Defendants' Master Discovery and allow each defendant to propound five additional defendant and/or case specific interrogatories and five additional defendant and/or case specific requests for production, not including subparts, over and above the master discovery for each individual plaintiff's claim.

Respectfully submitted this 9th day of March, 2018.

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Service Method: eService

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Electronically signed by Eliot Sanford on behalf of Jennifer Marie Studebaker
Dated: 03-09-2018