Jennifer M. Studebaker (Jennifer.Studebaker@formanwatkins.com)
Vernon M. McFarland (Vernon.McFarland@formanwatkins.com)
Joshua Leggett (Josh.Leggett@formanwatkins.com)
FORMAN WATKINS & KRUTZ LLP
210 East Capitol Street, Suite 2200
Jackson, MS 39201-2375
Telephone: (601) 973-5983
Facsimile: (601) 960-8613

Jean E. Faure (jfaure@faureholden.com)
Jason T. Holden (jholden@faureholden.com)
FAURE HOLDEN ATTORNEYS AT LAW, P.C.
1314 Central Avenue
P.O. Box 2466
Great Falls, MT 59403
Telephone: (406) 452-6500
Facsimile: (406) 452-6503

Attorneys for International Paper Co.

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION, *Consolidated Cases*	Cause No. AC 17-0694 DEFENDANT INTERNATIONAL PAPER COMPANY'S RESPONSE TO PLAINTIFFS' MOTION FOR DEFERRED DOCKET *MacDonald v. BNSF Railway Company*, Cascade County Cause No. DV-16-549 Also Applicable to All Cases

International Paper Company ("IP") files this response to Plaintiffs' Motion for Deferred Docket. The issue presented by Plaintiffs' Motion is what should be done with the hundreds of Unimpaired Plaintiffs with cases pending before this court. Both IP and Plaintiffs agree that these unimpaired cases should not proceed in the tort system. Plaintiffs propose an inactive docket where the cases in which the plaintiffs that have no asbestos-related impairment would be

parked until some point in the future when the plaintiff may develop such an impairment. IP agrees that the cases should be removed from the active docket of this court, but believes that the most efficient and economical way to do so is through dismissal of the cases without prejudice. This would obviate the need for a special docket for the cases and protect those plaintiffs (if any) who might in the future develop a true impairment from asbestos exposure. In granting the dismissal without prejudice, the Court could specifically rule that since the unimpaired plaintiffs do not currently have any impairment, there has been no triggering of the statute of limitations. This would satisfy the parties' concerns with preserving claims and avoiding premature litigation, while also avoiding the administrative burden of maintaining a large and growing inactive docket.

ARGUMENT

I. Unimpaired Plaintiffs' claims have not yet accrued, and their cases should therefore be dismissed without prejudice, with the ability to re-file should they become impaired.

A. By Plaintiffs' own admission, they have no impairment, may *never* have an impairment, and their claims are premature; they also argue that trying their cases now would deprive them of their Constitutional rights.

Plaintiff Jason MacDonald and "a very large number of Libby Plaintiffs" have "little or no current impairment" such that Plaintiffs' Counsel refers to them as "Unimpaired Plaintiffs." Pls' Brief at 1. In fact, Plaintiffs' Counsel avers that some of the Unimpaired Plaintiffs have pulmonary functions as high as 142%, meaning that their lung function – far from being impaired – is "super normal" or significantly *better* than what would be ordinarily expected. ACC Hearing Transcript, Feb. 20, 2018, at 52:12-15. Plaintiffs' Counsel also admit that it is impossible to predict which of the plaintiffs, if any, may someday develop an impairment. Pls' Brief at 4 ("[I]t is impossible to determine, for a given Unimpaired Plaintiff . . . whether that

person will progress to serious disease[.]" (emphasis omitted)). IP agrees with Plaintiffs that the claims filed on behalf of Unimpaired Plaintiffs are "premature litigation" that would burden the courts and the parties. Pls' Brief at 2.

Without an actual impairment upon which to base damages, these cases are not ripe for adjudication. As Plaintiffs point out, "a jury cannot determine damages based on progression averages." Pls' Brief at 4 (emphasis omitted). "Our judicial system and jury trial procedures do not contemplate a procedure for reaching an 'average' verdict . . . among Unimpaired Plaintiffs based on statistical averages. Either a given Plaintiff will progress or he/she will not." Pls' Brief at 7. Plaintiffs assert that "there is no utility in attempting to resolve the claims of Unimpaired Plaintiffs through a trial that can assess damages only for the Unimpaired Plaintiff's current status of non-existent or negligible pulmonary impairment." Pls' Brief at 8 (emphasis in the original). Plaintiffs' Counsel acknowledged in hearings before this Court that, "If the Court were to throw out hundreds of cases based on some diagnostic criteria *the overwhelming majority of those cases are going to be the ones that we're all agreeing don't need to be advanced right now*." ACC Hearing Transcript, Feb. 20, 2018, at 45:22-46:1 (emphasis added).

Plaintiffs also argue that "[f]orcing a Plaintiff to try a case before damages from disease progression are measurable and provable would violate the Plaintiffs' constitutional rights." Pls' Brief at 11. IP does not believe a response to the constitutional arguments is necessary, since it agrees with Plaintiffs' argument that these cases are not yet ripe for adjudication. However, the Defendants also have constitutional rights, which would be violated if claims against them were allowed to linger indefinitely on a deferred docket.

It is abundantly clear that Unimpaired Plaintiffs have no interest in prosecuting their claims at this time. In fact, they argue strenuously against being "forced" to do so. As such, dismissal would be the most efficient option in dealing with Unimpaired Plaintiffs' claims.

B. Dismissal with the ability to re-file would be the most appropriate course of action and can be achieved in a manner that addresses all of Plaintiffs' concerns.

The Unimpaired Plaintiffs, by definition, are not impaired, and therefore, have no compensable injury. Without a compensable impairment (i.e., damages), the statute of limitations does not begin to run. A dismissal by this Court expressly stating that the plaintiff has no damages and therefore the statute of limitations has not been triggered would ensure that in the unlikely event that any currently unimpaired plaintiff develops asbestos-related impairment in the future, he/she would be able to file a new claim based on the development of the compensable injury. In other words, there is no reason for the plaintiff to be concerned with the tolling of the statute of limitations as the statute has not started to run on their nonexistent compensable injury.

Plaintiffs' Counsel states that the Unimpaired Plaintiffs "have filed suit solely to secure the statutes of limitations." Pls' Brief at 1 (emphasis in the original). From their Brief, it appears that a dismissal and re-filing procedure would actually be their preference. However, they propose a deferred docket believing their first choice is foreclosed by the inability to enter a stipulated tolling agreement with Defendants. *See* Pls' Brief at 4-7 (indicating that dismissing and re-filing claims has been successful in avoiding premature litigation in the past, and stating (in bold) an advantage offered by this option – something they do not do for any of the other options on their list). *See also* Pls' Brief, Exhibit 1, electronic correspondence from A. McGarvey to J. Studebaker, at 1 ("The alternative . . . through some sort of deferred docket

presents the possibility of elements and procedures that may be unsatisfactory to both plaintiffs and defendants.").

As a preliminary matter, for negligence claims, a cause of action for asbestos-related disease has not accrued until there is impairment. Plaintiffs cite no authority to support their assertion that they must file unimpaired cases to protect their statute of limitations, and under MCA § 27-2-102, a "claim or cause of action accrues when all elements of the claim or cause exist or have occurred[.]" It is well established that damages are a required element of negligence claims. *See, e.g., Massee v. Thompson*, 90 P.3d 394, 400 (Mont. 2004) ("The four elements of a common law negligence claim are duty, a breach of that duty, causation and damages. Each of these elements must exist for a negligence claim to proceed." (citing *Hendricksen v. State*, 84 P.3d 38 (Mont. 2000)). Without a compensable injury, there are no damages.[1] This necessary element is missing for the Unimpaired Plaintiffs. Thus, their causes of action have not accrued, and the statute of limitations has not begun to run. MCA § 27-2-102(2) ("Unless otherwise provided by statute, the period of limitations begins when the claim or cause of action accrues."). This coincides with the nationwide trend toward "the treatment of pleural plaques and pleural thickening as non-cognizable, unless and until plaintiffs exhibit physical impairments or malignancies." *In re Asbestos Products Liab. Litig. (No. VI)*, 2012 WL 3242420, at *7 (E.D.Pa. 2012) (going on to cite cases finding that pleural plaques and thickening, and asymptomatic asbestos-related conditions are not actionable under the laws of *ten* different states), attached as Exhibit A. As the MDL judge also noted, there were *no* cases

[1] While nominal damages are permitted "[w]hen a breach of duty has caused no appreciable detriment to the party affected," MCA § 27-1-204, this in no way requires that a claimant file an action prior to the accrual of damages to avoid losing the claim. Rather, this provision is intended to allow *some* recovery in circumstances where no actual damages will ever occur. It placed into statute a settled principle of Montana law, that a breach is "an invasion of the injured party's legal rights" such that nominal damages should be allowed, even without actual damages. *See Rickards v. Aultman & Taylor Machinery Co.*, 210 P. 82 (Mont. 1922).

brought to the court's attention where an asymptomatic and unimpaired plaintiff claiming asbestos exposure was allowed to maintain a claim under state law." *Id.* at *8.

Though Plaintiffs cite concerns regarding the statute of limitations, they make contradictory statements[2] that ultimately reveal it is not a real issue. Even if the Unimpaired Plaintiffs' current claims were dismissed, "when the same individual is thereafter correctly diagnosed with asbestos disease, that 'new' diagnosis of an injury . . . will proceed, making the entire previous adjudication an utter waste of time." Pls' Brief at 6. *See also* ACC Hearing Transcript, Feb. 20, 2018, at 63:9-16 ("[I]f that person [whose claim was dismissed for not having a valid diagnosis] *does* progress then they would have a new claim." (emphasis added)). Through these remarks, Plaintiffs' Counsel reveals their belief that if an Unimpaired Plaintiff were to be diagnosed with an impairment later, he or she could simply file a new action, within the statutory period that begins to run upon discovery of the impairment. Unimpaired Plaintiffs only lose a claim based on a diagnosis with no attendant impairment, meaning it was a claim with no damages – i.e., nothing of value. Plaintiffs also note that the American Thoracic Society (ATS) has stated that initial diagnoses under its standards are not to serve litigation purposes such as triggering statutes of limitations. Pls' Brief at 6, n4.

Notwithstanding the already-existing law that should eliminate the need to file claims prior to impairment, this Court could resolve all doubt by establishing that there is no cause of action until there is an impairment. Plaintiffs themselves acknowledge that the dismiss-and-re-file approach, using a tolling agreement, has been successful in their earlier cases, and that "***A***

[2] For example, in arguing for a deferred docket, Plaintiffs claim that Unimpaired Plaintiffs would be "foreclosed from full recovery **unless** a 'subsequent action' is permitted." Pls' Brief at 10 (emphases in the original). They seem to say that a subsequent action is *not* permitted in Montana, and therefore they should not be forced to try their cases until their injuries are further developed. But immediately thereafter, they assert that "the parties benefit from the avoidance of a multiplicity of cases by deferring litigation until a more complete resolution can be obtained." *Id.* (emphasis in the original). This seems to indicate their belief that the same plaintiff is in fact entitled to bring subsequent claims, should he or she develop a new disease or impairment. This directly contradicts their prior point.

clear advantage of this system is that claimants would <u>not</u> refile if they do not progress." Pls' Brief at 5 (emphases in the original). IP is uncertain whether parties truly have the ability to avoid statutorily established limitations periods by agreement. What is certain is that an order from this Court could settle the issue. The Court can issue an order stating there is no cause of action for asbestos-related injuries until there is a physical impairment, such that the statute of limitations would not start until an impairment occurs.[3] Upon such order, there would be no further concerns about simply dismissing the cases of Unimpaired Plaintiffs, with the right to re-file upon the showing of an impairment. The issues identified by Plaintiffs would be satisfied through this approach, probably in a manner that is more to their satisfaction than a deferred docket.

By creating the Asbestos Claims Court, the legislature endowed this court with the inherent power to manage its docket and the cases under its jurisdiction, including the authority to dismiss cases. Here, IP believes that the parties can work together to identify the cases that should be dismissed, and ultimately file a joint motion to dismiss. For any cases upon which the parties disagree, it asks that the Court adopt specific medical criteria for impairment, which will determine whether a case is dismissed. Specifically, IP proposes the use of the medical criteria detailed in the deferred docket section below. Established medical criteria will likely lead the parties to agree on whether most of the contested cases will be dismissed. Then only the remaining contested cases can be presented to the Court for a determination on the plaintiffs' status.

[3] Such an order could apply to all claims based on asbestos-related disease, including negligence and strict liability claims.

C. Dismissal would allow the Court to avoid the significant administrative burden of managing a deferred docket.

Maintaining a deferred docket for the claims of Unimpaired Plaintiffs will require administrative effort and economic investment, with more work and expense required over time as the docket grows. Growth in the docket is inevitable – the claims that are currently pending may remain indefinitely, with more being filed each year. It is also unclear what purpose this effort would serve. If Unimpaired Plaintiffs become impaired, they would need to file amended pleadings and updated medical records regardless. They gain nothing from having the Court maintain their files, potentially for decades. There would also have to be a periodic review of the accumulated cases, to determine which should be dismissed – for example, because a plaintiff has died without developing an impairment. Eventually, the deferred docket is likely to grow to some unmanageable size, until the Court finds it necessary to just dismiss the claims.

The experiences of other asbestos courts provide some insight. Responding to an overwhelming docket, the Texas legislature in 2005 in effect created a deferred docket by requiring plaintiffs to present a qualifying medical report before moving their cases forward. S.B. 15, 79th Leg. (Tex. 2005). Eight years later, in 2013, the legislature found that "under current procedures, scarce judicial and litigant resources are being misdirected by the claims of individuals who have been exposed to asbestos or silica but have no functional or physical impairments[.]" RELATING TO THE DISMISSAL OF CERTAIN ACTIONS ARISING FROM EXPOSURE TO ASBESTOS AND SILICA, Tex. Comm. Rep. on 2013 TX. H.B. 1325, Tex. Eighty-Third Legislature (Apr. 22, 2013). It determined that it should instead allow for dismissal of the claims, without prejudice, with the right to file another action if the plaintiff developed a qualifying impairment. This would "prevent such a misdirection of resources and allow the multidistrict litigation pretrial courts that hear such cases to better manage their dockets[.]" *Id.*

There is no need to wait for the claims to accumulate to the point of becoming unmanageable and economically burdensome. The far simpler, more proactive, and most efficient approach would be to dismiss the claims now, rather than allowing them to languish on a deferred docket. This would lessen the administrative and economic burden on the Court, fully meet all the needs of Plaintiffs, and provide some relief to Defendants.

II. In the alternative, if the Court creates a deferred docket, specific medical criteria and procedures must be established for moving a claim to the active docket.

IP strongly believes that dismissal with the right to re-file claims is the most appropriate and efficient way to address the issue of Unimpaired Plaintiffs. However, if the Court rules in favor of a deferred docket, there should be objective medical criteria established that a plaintiff must meet prior to activating their litigation. In their brief, Plaintiffs do not present any criteria for determining which claims would initially be placed on the deferred docket, or how a claim on the deferred docket would be activated. These details are critical.

A. There must be specific, objective medical criteria for establishing that a Plaintiff is "impaired" and qualifies for the active docket.

Setting specific medical criteria for impairment would provide clarity to all parties and add a level of objectivity to aid in fairness. Without established criteria, Plaintiffs essentially hold unilateral power to decide which cases will be on the deferred docket, and when those cases will be "activated." This will indefinitely extend the amount of time a case could be on file with no recourse available to Defendants, in violation of their constitutional rights.

All parties before this Court agree that the American Thoracic Society (ATS) is the preeminent authority in the relevant field of medicine, and its diagnostic criteria provide the definitive guidelines for diagnosis of asbestos-related disease and impairment. As Plaintiffs' Counsel stated before the Court, "with more advanced disease, you have plaintiffs that have a

demonstrable disease according to the American Thoracic Society criteria, that I think everyone in this room could basically concur with." ACC Hearing Transcript, Jan. 31, 2018, at 68:18-22. IP agrees that the ATS is the authority in this field, and that diagnoses should align with the ATS criteria in order to be used in this litigation.

As discussed in Defendants' collective Position Statement in January, several states have established medical criteria that must be met before a plaintiff may pursue his or her claims. IP now renews its request that this Court adopt the Texas criteria, which have the benefit of specificity, should a deferred docket be enacted. The Texas statute, TEX. CIV. PRAC. & REM. CODE ANN. § 90.003(a) (2015), requires a qualified physician's report that:

- Verifies the patient has been physically examined
- Provides the details of the patient's occupational, exposure, medical, and smoking history
- Verifies that the patient had a chest x-ray read by a certified B-reader, the results of which meet specific grading criteria under the International Labour Organization (ILO) standards
    - Specifically, that one of the following was found:
        - Bilateral small irregular opacities (s, t, or u) with a profusion grading of 1/1 or higher;
        - Bilateral diffuse pleural thickening graded b2 or higher including blunting of the costophrenic angle; or
        - Pathological asbestosis graded 1(B) or higher under the criteria published in "Asbestos-Associated Diseases," 106 Archives of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982).
- Verifies that the patient's pulmonary function tests meet specific criteria – specifically:
    - Forced vital capacity ("FVC") below the lower limit of normal or below 80% of predicted; and FEV1/FVC ratio at or above the lower limit of normal, or at or above 65%; or
    - Total lung capacity ("TLC"), by plethysmography or timed gas dilution, below the lower limit of normal or below 80% of predicted
- Verifies the physician's conclusion that the patient's impairment was not more probably the result of causes other than exposure to asbestos, based on the occupational, exposure, medical, and smoking history.

Notably, the Texas standards for pulmonary function exactly match the medical criteria for impairment-based claims against the W.R. Grace Asbestos PI Trust (Grace Trust). In order to qualify as a Level III Asbestosis/Pleural Disease claim, the lowest level of claim involving

impairment, the Grace Trust requires either 1) a TLC of less than 80%, or 2) an FVC of less than 80% and an FEV1/FVC ratio of no more than 65%. Trust Distribution Procedures, WRG PI Trust, at 27, attached as Exhibit B. Plaintiffs' Counsel agreed to the criteria for the Grace Trust, and indicated to the Court that they consider the Trust's categorization of disease to be "an exemplar" that reflects contemporary thought on severity levels. ACC Hearing Transcript, Apr. 16, 2018, at 42:14-44:20. IP therefore sees no reason that Plaintiffs would object to this Court's adoption of the same criteria here to determine when a Plaintiff is "impaired."

Those initially placed on the deferred docket would need to produce a qualifying medical report demonstrating impairment under the criteria adopted by the Court in order to move to the active docket.

B. Defendants must have an opportunity to object to the activation of a Plaintiff's case.

Upon the filing of a medical report for the purpose of moving a Plaintiff's case to the active docket, Defendants should be afforded the opportunity to challenge the activation. While it is impossible to foresee all possible circumstances, such challenges may stem from concerns about the adequacy or reliability of the medical report, the practices of the diagnosing physician, or whether the ATS standards were in fact met. Objections may never need to be raised, but the procedural opportunity is necessary, especially given the well-documented history of abuse and fraud in asbestos litigation. This would provide fairness to Defendants in a process that is otherwise controlled by Plaintiffs and would prevent unnecessary clogging of the active docket with dubious claims.

III. If the issue of the CARD Clinic's reliability is to be avoided, CARD diagnoses must not be used for re-filing or for moving a case to the active docket.

Plaintiffs apparently misunderstand Defendants' concerns regarding the CARD Clinic. They claim that the fight is over the initial diagnoses by CARD and assert that the reliability of

CARD diagnoses will cease to be relevant if they do not offer the initial CARD diagnoses as evidence. Pls' Brief at 5-6. This is not necessarily the case. If Plaintiffs offer CARD diagnoses of impairment as the basis for re-filing a dismissed case or moving a case to the active docket, the reliability of CARD's methods will remain an issue. Defendants are investigating CARD's practices and anticipate that any issues that would have applied to the reliability of its initial diagnoses would apply equally to its diagnoses of more advanced disease. The CARD issue will become irrelevant only if Plaintiffs agree not to rely on *any* diagnoses by CARD in the litigation of their claims.

CONCLUSION

It is clear that dismissal of the claims of Unimpaired Plaintiffs would best serve the interests of all parties, as well as the Court. Accordingly, IP requests that this Court:

1. Rule that asbestos claims do not accrue until there is a cognizable impairment,
2. Dismiss the claims of Unimpaired Plaintiffs without prejudice, with medical criteria being adopted to determine which cases should be dismissed, if the parties cannot agree, and
3. Allow dismissed Plaintiffs to re-file should they become impaired.

In the alterative, if the Court creates a deferred docket for Unimpaired Plaintiffs, IP requests that this Court:

1. Adopt specific, objective medical criteria to qualify for the active docket, and
2. Provide the Defendants with the opportunity to object to the activation of claims.

Respectfully submitted, this the 14th day of May, 2018.

By: /s/ Jennifer M. Studebaker

Jennifer M. Studebaker
Vernon M. McFarland
Joshua Leggett
FORMAN WATKINS & KRUTZ LLP
210 East Capitol Street, Suite 2200
Jackson, MS 39201-2375
Telephone: (601) 973-5983
Facsimile: (601) 960-8613

Jean E. Faure
Jason T. Holden
FAURE HOLDEN ATTORNEYS AT LAW, P.C.
1314 Central Avenue
P.O. Box 2466
Great Falls, MT 59403
Telephone: (406) 452-6500
Facsimile: (406) 452-6503

Attorneys for International Paper Co.

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copies of the foregoing Response to Plaintiffs' Motion for Deferred Docket to the following on the 14th day of May, 2018:

Law Firm	Counsel	Representing
McGarvey Herberling Sullivan & Lacey 345 1st Ave E Kalispell, MT 59901	*Roger M. Sullivan* **rsullivan@mcgarveylaw.com**	Barnes, et al; Adams, et al; Clairmont, et al; Mary A. Robertson
	Allan M. McGarvey **amcgarvey@mcgarveylaw.com**	
	Jon L. Herberling **johaire@mcgarveylaw.com**	
	John F. Lacey **jlacey@mcgarveylaw.com**	
	Ethan Aubrey Welder **ewelder@mcgarveylaw.com**	
	Dustin Alan Richard Leftridge **dleftridge@mcgarveylaw.com**	
Crist, Krogh & Nord PLLC 2708 1st Ave N. Billings, MT 59101	*Harlan B. Krogh* **hkrogh@cristlaw.com**	ITT LLC, et al
Crowley Fleck, PLLP 305 S. 4th St. E Missoula, MT 59801	*Jeffrey R. Kuchel* **jkuchel@crowleyfleck.com**	Accel Performance Group, LLC, et al; MW Customs Papers, LLC
	Danielle A.R. Coffman **dcoffman@crowleyfleck.com**	
	Steven Robert Milch **smilch@crowleyfleck.com**	Farm Equipment Sales, Inc.
	Joe C. Maynard **jmaynard@crowleyfleck.com**	
Foley & Mansfield 250 Marquette Avenue Suite 1200 Minneapolis, MN 55401	*Elizabeth M. Sorenson Brotten* **ebrotten@foleymansfield.com**	McMaster-Carr Supply Company
Ugrin Alexander Zadick, P.C. #2 Railroad Square, Suite B P.O. Box 1746 Great Falls, Montana 59403	*Gary M. Zadick* **gmz@uazh.com**	Honeywell International
N.A.	*Kathryn Kohn Troldahl* **kohnkathryn1@gmail.com**	

Moyers Law PC 490 N 31st St. Suite 101 Billings, MT 59101	*Jon Mark Moyers* **jon@jmoyerslaw.com**	Heather M. Haney, Plaintiff
Simon Greenstone Panatier Bartlett 3232 McKinney Avenue Suite 610 Dallas, Texas 75204	*Steven Scott Schulte* **sschulte@sgpblaw.com**	
Moulton Bellingham, P.C. 27 North 27th Street, Suite 1900 P.O. Box 2559 Billings, MT 59103-2559	*Gerry P.Fagan* **Gerry.Fagan@moultonbellingham.com**	CNH Industrial America
Nelson Law Firm, P.C. 2619 St. Johns Avenue, Suite E Billings, Montana 59102	*Thomas C. Bancroft* **tbancroft@nelsonlawmontana.com**	Arrowood Indemnity Co.
Milodragovich, Dale & Steinbrenner, PC 620 High Park Way Missoula, MT 59803	*Patrick G. HagEstad* **gpatrick@bigskylawyers.com**	Crane Co.; Riley Stoker Corp, et al.; United Conveyor Corp.
	Rachel Hendershot Parkin **rparkin@bigskylawyers.com**	Crane Co.
Marra Evenson & Bell, P.C. 2 Railroad Square, Suite C P.O. Box 1525 Great Falls, MT 59403-1525	*Kirk D. Evenson* **kevenson@marralawfirm.com**	CBS Corp.; Hennessy Industries, Inc.
Poore, Roth & Robinson, P.C. 1341 Harrison Ave Butte, MT 59701	*Mark Andrew Thieszen* **mark@prrlaw.com**	The William Powell Co.; Atlantic Richfield Co., et al
	Patrick M. Sullivan **pss@prrlaw.com**	
	John Patrick Davis **jpd@prrlaw.com**	Atlantic Richfield Company, et al.

Forman Watkins & Krutz, LLP 210 East Capitol Street Suite 2200 Jackson, Mississippi 39201-2375	*Jennifer M. Studebaker* **jennifer.studebaker@formanwatkins.com**	Goulds Pump, LLC; Grinnell Corp.; ITT, LLC, et al.; International Paper Co.
	Joshua Alexander Leggett **josh.leggett@formanwatkins.com**	
	Vernon M McFarland **vernon.mcfarland@formanwatkins.com**	
Faure Holden PC 1314 Central Ave, Great Falls, MT 59401 **Faure Holden PC** 1314 Central Ave, Great Falls, MT 59401	*Jean Elizabeth Faure* **jfaure@faureholden.com**	Goulds Pump, LLC; Grinnell Corp.; ITT, LLC, et al.; Borg Warner Morse Tec LLC; International Paper Co.
	Jason Trinity Holden **jholden@faureholden.com**	
	Katie Rose Ranta **kranta@faureholden.com**	Borg Warner Morse Tec LLC
Garlington, Lohn & Robinson, PLLP P.O. Box 7909 Missoula, MT 59807	*Elizabeth Laurence Hausbeck* **elhausbeck@garlington.com**	Mack Trucks, Inc.; PACCAR Inc.; Deere & Company; Navistar, Inc.; Bestwall LLC f/k/a Georgia Pacific LLC
	Justin K. Cole **jkcole@garlington.com**	
	Leah T. Handelman **lthandelman@garlington.com**	
	Robert J. Phillips **rjphillips@garlington.com**	BNSF Railway Company; Grefco Inc. et al
	Emma L. Mediak **elmediak@garlington.com**	
	Robert L. Nowels **rlnowels@garlington.com**	

Browning Kaleczyc Berry & Hoven, P.C. 201 Railroad St W # 300 Missoula, MT 59802	*Chad E. Adams* **chad@bkbh.com**	Union Pacific Railroad Co.; Soo Line Railroad Co.; Weir Valves & Controls USA; Cyprus Amex Minerals Co.; Fischbach and Moore, Inc. et al; American Honda Motor Co., Inc.; Harder Mechanical Contractors; Nissan North American Inc.
	J. Daniel Hoven **dan@bkbh.com**	Union Pacific Railroad Co.; Soo Line Railroad Co.
	Daniel J. Auerbach **daniel@bkbh.com**	Weir Valves & Controls USA; Cyprus Amex Mineral Co.
	Leo Sean Ward **leow@bkbh.com**	Weir Valves & Controls USA; Cyprus Amex Mineral Co.; Fischback and Moore Inc. et al; American Honda Motor Co., Inc.; Harder Mechanical Contractors; Nissan North American Inc.

Holland & Hart 401 North 31st Street Suite 1500 Billings, MT 59101	*Scott W. Mitchell* **smitchell@hollandhart.com**	Pfizer, Inc.
	Brianne McClafferty **bcmclafferty@hollandhart.com**	
Dorsey & Whitney LLP *Missoula:* Millennium Building 125 Bank Street, Suite 600 Missoula, MT 59802-4407 *Salt Lake:* 111 South Main Street Suite 2100 Salt Lake City, UT 84111-2176	*Stephen D. Bell* **bell.steve@dorsey.com**	Ford Motor Co.
	Dan R. Larsen **larsen.dan@dorsey.com**	
Helland Law Firm, PLLC 311 Klein Ave Glasgow, MT 59230	*Peter L. Helland* **phelland@hellandlawfirm.com**	
Bohyer Erickson Beaudette & Tranel, PC 283 W Front St # 201 Missoula, MT 59802	*John Eric Bohyer* **mail@bebtlaw.com**	New Holland North America, Inc.
	Ryan T. Heuwinkel **mail@bebtlaw.com**	
Brown Law Firm 269 W Front St Ste. A Missoula, MT 59802	*Kelly Gallinger* **kgallinger@brownfirm.com**	Maryland Casualty Corp.
Doney Crowley Payne Bloomquist PC 44 6th Ave Helena, MT 59601	*Richard Allan Payne* **rpayne@doneylaw.com**	The Goodyear Tire & Rubber Co.
	John Connors **Jconnors@doneylaw.com**	
	Mark Smith **msmith@doneylaw.com**	
Keller Law Firm, P.C. 50 S Last Chance Gulch St Helena, MT 59601	*Charles J. Seifert* **cjseifert@kellerlawmt.com**	Ford Motor Co.; Maryland Casualty Corp.; Tilleman Motors and Zerbe Brothers

	Ryan Lorenz **rlorenz@kellerlawmt.com**	Maryland Casualty Corp.; Tilleman Motors and Zerbe Brothers
Jardine Stephenson Blewett PC 300 Central Ave # 700 Great Falls, MT 59401	*Robert B. Pfennings* **bpfennigs@jardinelaw.com**	Stimson Lumber Co.; Zurn Industries Inc.; Mazda Motor of America, Inc.
	Rick A. Regh **rregh@jardinelaw.com**	
	Mark Trevor Wilson **mwilson@jardinelaw.com**	
Jackson, Murdo & Grant, P.C. 203 N Ewing St Helena, MT 59601	*Robert M. Murdo* **murdo@jmgm.com**	Mine Safety Appliance Co. LLC
	Murry Warhank **mwarhank@jmgm.com**	
Kovacich Snipes, P.C. 725 3rd Ave N. Great Falls, MT 59401	*Ben A. Snipes* **ben@mttriallawyers.com**	Backen, et al; Sue Kukus, et al
	Mark M. Kovacich **mark@mttriallawyers.com**	
	Ross Thomas Johnson **ross@mttriallawyers.com**	
Boone Karlberg P.C. 201 W Main St Suite 300 Missoula, MT 59802	*Randy J. Cox* **rcox@boonekarlberg.com**	A.W. Chesterson Co.; Volkswagon of America, Inc.
	Zachary Aaron Franz **zfranz@boonekarlberg.com**	A.W. Chesterson Co.
	Thomas J. Leonard **tleonard@boonekarlberg.com**	Volkswagon of America, Inc.
	Robert J. Sullivan **bsullivan@boonekarlberg.com**	Ingersoll-Rand Co.

Snell & Wilmer *Phoenix:* One Arizona Center 400 East Van Buren Street Suite 1900 Phoenix, AZ 85004-2202 *Las Vegas:* Hughes Center 3883 Howard Hughes Parkway Suite 1100 Las Vegas, NV 89169-5958 *Salt Lake City:* Gateway Tower West 15 West South Temple Suite 1200 Salt Lake City, UT 84101-1547 *Denver:* Tabor Center 1200 Seventeenth Street Suite 1900 Denver, CO 80202-5854	*M. Covey Morris* **mcmorris@swlaw.com**	FMC Corporation
	Tracy H. Fowler **tfowler@swlaw.com**	The Proctor & Gamble Company, et al.
	Vaughn A. Crawford **vcrawford@swlaw.com**	
Moore Cockrell Goicoechea & Johnson, P.C. PO Box 7370 Kalispell, MT 59904	*Dale R. Cockrell* **dcockrell@mcgalaw.com**	State of Montana
Law Offices of Bob Fain 2060 Overland Ave. Suite D Billings, Montana 59102	*Bob Fain* **bob@fainlaw.com**	Gomez, et al.
Lewis Brisbois 1700 Lincoln Street Suite 4000 Denver, CO 80203	*Ronald L. Hellbusch* **ronald.hellbusch@lewisbrisbois.com**	AGCO Corporation, et al.
N.A.	*Leslie Budewitz* **leslie@lesliebudewitz.com**	
Attorney's Inc. 301 W Spruce St. Missoula, MT 59802	*Rexford L. Palmer* **attorneysinc@montana.com**	Alexander, et al.
Pustorino, Tilton, Parrington & Lindquist, PLLC 6600 France Ave S #680, Minneapolis, MN 55435	*Jon P. Parrington* **jpp@pptplaw.com**	Hennessy Industries, Inc.

Worden Thane 321 W. Broadway, Suite 300 Missoula, MT 59802	*Martin S. King* **mking@wordenthane.com**	Foster Wheeler Energy Services, Inc.
Davis Hatley Haffeman & Tighe, P.C. 101 River Drive North Milwaukee Station, 3rd Floor Great Falls, MT 59401	*Maxon R. Davis* **max.davis@dhhtlaw.com**	Continental Casualty Co.
Lewis Roca Rothgerber Christie 1200 Seventeenth Street Suite 3000 Denver, CO 80202	*Michael D. Plachy* **mplachy@lrrc.com** *Conor A. Flanigan* **cflanigan@lrrc.com**	Honeywell International
Michael Crill P.O. Box 145 Rimrock, 86335	*Michael Crill* **MAIL ONLY**	Self-Represented
Christopher S. Marks 520 Pike St., Suite 2200 Seattle, 98101	*Christopher S. Marks* **MAIL ONLY**	Volkswagen of America, Inc.

/s/ Jennifer M. Studebaker
Jennifer M. Studebaker
(MT # 41641781)

Attorney for International Paper Company

OF COUNSEL:

FORMAN WATKINS & KRUTZ LLP
210 East Capitol Street, Suite 2200
Jackson, MS 39201-2375
Telephone: (601) 973-5983
Facsimile: (601) 960-8613
Jennifer.Studebaker@formanwatkins.com

CERTIFICATE OF SERVICE

I, Jennifer Marie Studebaker, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 05-14-2018:

Amy Poehling Eddy (Attorney)
920 South Main
Kalispell MT 59901
Representing: Amy Eddy
Service Method: eService

Roger M. Sullivan (Attorney)
345 1st Avenue E
MT
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Allan M. McGarvey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jon L. Heberling (Attorney)
345 First Ave E
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

John F. Lacey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Ethan Aubrey Welder (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jeffrey R. Kuchel (Attorney)
305 South 4th Street East
Suite 100
Missoula MT 59801
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Danielle A.R. Coffman (Attorney)
1667 Whitefish Stage Rd
Kalispell MT 59901
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Gary M. Zadick (Attorney)
P.O. Box 1746
#2 Railroad Square, Suite B
Great Falls MT 59403
Representing: Honeywell International
Service Method: eService

Gerry P. Fagan (Attorney)
27 North 27th Street, Suite 1900
P O Box 2559
Billings MT 59103-2559
Representing: CNH Industrial America LLC
Service Method: eService

G. Patrick HagEstad (Attorney)
PO Box 4947
Missoula MT 59806
Representing: Crane Co., United Conveyor Corporation, Riley Stoker Corporation et al
Service Method: eService

Rachel Hendershot Parkin (Attorney)
PO Box 4947
Missoula MT 59806
Representing: Crane Co.
Service Method: eService

Kirk D. Evenson (Attorney)
Marra, Evenson & Bell, P.C.

P.O. Box 1525
Great Falls MT 59403
Representing: CBS Corporation
Service Method: eService

Mark Andrew Thieszen (Attorney)
Poore Roth & Robinson, P.C.
1341 Harrison Ave
Butte MT 59701
Representing: The William Powell Company, Atlantic Richfield Company, et al
Service Method: eService

Patrick M. Sullivan (Attorney)
1341 Harrison Ave
Butte MT 59701
Representing: The William Powell Company, Atlantic Richfield Company, et al
Service Method: eService

Joshua Alexander Leggett (Attorney)
210 East Capitol Street, Suite 2200
Jackson MS 39201-2375
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Vernon M. McFarland (Attorney)
200 South Lamar Street, Suite 100
Jackson MS 39201-4099
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Jean Elizabeth Faure (Attorney)
P.O. Box 2466
1314 Central Avenue
Great Falls MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, Borg Warner Morse Tec LLC, International Paper Co.
Service Method: eService

Jason Trinity Holden (Attorney)
1314 CENTRAL AVE
P.O. BOX 2466
Montana
GREAT FALLS MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, Borg Warner Morse Tec LLC, International Paper Co.
Service Method: eService

Chad E. Adams (Attorney)
PO Box 1697

Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.
Service Method: eService

Katie Rose Ranta (Attorney)
Faure Holden, Attorneys at Law, P.C.
1314 Central Avenue
P.O. Box 2466
GREAT FALLS MT 59403
Representing: Borg Warner Morse Tec LLC
Service Method: eService

John Patrick Davis (Attorney)
1341 Harrison Avenue
Butte MT 59701
Representing: Atlantic Richfield Company, et al
Service Method: eService

Stephen Dolan Bell (Attorney)
Dorsey & Whitney LLP
125 Bank Street
Suite 600
Missoula MT 59802
Representing: Ford Motor Company
Service Method: eService

Dan R. Larsen (Attorney)
Dorsey & Whitney LLP
111 South Main
Suite 2100
Salt Lake City UT 84111
Representing: Ford Motor Company
Service Method: eService

Peter L. Helland (Attorney)
311 Klein Avenue, Suite A
P.O. Box 512
Glasgow MT 59230
Representing: Ford Motor Company
Service Method: eService

Kelly Gallinger (Attorney)
315 North 24th Street
Billings MT 59101
Representing: Maryland Casualty Corporation
Service Method: eService

Charles J. Seifert (Attorney)
P.O. Box 598
Helena MT 59624
Representing: Ford Motor Company, Maryland Casualty Corporation
Service Method: eService

Robert J. Phillips (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Emma Laughlin Mediak (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Daniel Jordan Auerbach (Attorney)
201 West Railroad St., Suite 300
Missoula MT 59802
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company
Service Method: eService

Leo Sean Ward (Attorney)
PO Box 1697
Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.
Service Method: eService

Robert B. Pfennigs (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Rick A. Regh (Attorney)
P.O. Box 2269
GREAT FALLS MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Mark Trevor Wilson (Attorney)
300 Central Ave.
7th Floor

P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Robert M. Murdo (Attorney)
203 N orth Ewing
Helena MT 59601
Representing: Mine Safety Appliance Company LLC
Service Method: eService

Murry Warhank (Attorney)
203 North Ewing Street
Helena MT 59601
Representing: Mine Safety Appliance Company LLC
Service Method: eService

Ben A. Snipes (Attorney)
Kovacich Snipes, PC
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al, Sue Kukus, et al
Service Method: eService

Mark M. Kovacich (Attorney)
Kovacich Snipes, PC
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al, Sue Kukus, et al
Service Method: eService

Ross Thomas Johnson (Attorney)
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al, Sue Kukus, et al
Service Method: eService

Randy J. Cox (Attorney)
P. O. Box 9199
Missoula MT 59807
Representing: A.W. Chesterson Company
Service Method: eService

Zachary Aaron Franz (Attorney)
201 W. Main St.
Suite 300
Missoula MT 59802
Representing: A.W. Chesterson Company
Service Method: eService

M. Covey Morris (Attorney)
Tabor Center
1200 Seventeenth St., Ste. 1900
Denver CO 80202
Representing: FMC Corporation
Service Method: eService

Robert J. Sullivan (Attorney)
PO Box 9199
Missoula MT 59807
Representing: Ingersoll-Rand, Co.
Service Method: eService

Dale R. Cockrell (Attorney)
145 Commons Loop, Suite 200
P.O. Box 7370
Kalispell MT 59904
Representing: State of Montana
Service Method: eService

Vaughn A. Crawford (Attorney)
SNELL & WILMER, L.L.P.
400 East Van Buren
Suite 1900
Phoenix AZ 85004
Representing: The Proctor & Gamble Company et al
Service Method: eService

Tracy H. Fowler (Attorney)
15 West South Temple
Suite 1200
South Jordan UT 84101
Representing: The Proctor & Gamble Company et al
Service Method: eService

Martin S. King (Attorney)
321 West Broadway, Suite 300
P.O. Box 4747
Missoula MT 59806
Representing: Foster Wheeler Energy Services, Inc.
Service Method: eService

Maxon R. Davis (Attorney)
P.O. Box 2103
Great Falls MT 59403
Representing: Continental Casualty Company
Service Method: eService

Tom L. Lewis (Attorney)
2715 Park Garden Lane
Great Falls MT 59404
Representing: Harold N. Samples
Service Method: eService

Keith Edward Ekstrom (Attorney)
601 Carlson Parkway #995
Minnetonka MN 55305
Representing: Brent Wetsch
Service Method: eService

William Rossbach (Attorney)
401 N. Washington
P. O. Box 8988
Missoula MT 59807
Representing: Michael Letasky
Service Method: eService

Kennedy C. Ramos (Attorney)
1717 Pennsylvania Avenue NW
1200
wash DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Edward J. Longosz (Attorney)
1717 Pennsylvania Avenue NW
Suite 1200
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Chad M. Knight (Attorney)
929 Pearl Street
Ste. 350
Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Anthony Michael Nicastro (Attorney)
401 North 31st Street
Suite 770
Billings MT 59101
Representing: BNSF Railway Company
Service Method: eService

Nadia Hafeez Patrick (Attorney)
929 Pearl Street Suite 350

Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Kevin A. Twidwell (Attorney)
1911 South Higgins Ave
PO Box 9312
Missoula MT 59807
Representing: Libby School District #4
Service Method: eService

Jinnifer Jeresek Mariman (Attorney)
345 First Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Michael Crill (Other)
PO Box 145
Rimrock AZ 86335
Service Method: Conventional

Michael D. Plachy (Attorney)
1200 17th Street
Denver CO 80202
Representing: Honeywell International
Service Method: Conventional

Conor A. Flanigan (Attorney)
1200 17th Street
Denver CO 80202
Representing: Honeywell International
Service Method: Conventional

Fredric A. Bremseth (Attorney)
601 Carlson Parkway, Suite 995
Minnetonka MN 55305-5232
Representing: Brent Wetsch
Service Method: Conventional

Walter G. Watkins (Attorney)
210 E. Capitol Street, Ste. 2200
Jackson MS 39201
Representing: International Paper Co.
Service Method: Conventional

Electronically signed by RJ McInnis on behalf of Jennifer Marie Studebaker
Dated: 05-14-2018